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PREPARATIONS FOR A HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION

Handbook on Restrictive Business Practices Legislation

Note by the UNCTAD secretariat

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INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in Section F.6 (c), provides for the compilation of a Handbook on Restrictive Business Practices Legislation.

2. The Intergovernmental Group of Experts on Restrictive Business Practices, in the agreed decisions and conclusions adopted at its sixth session, requested the UNCTAD secretariat to continue compiling the Handbook, as carried out so far (in documents TD/B/RBP/33 and TD/B/RBP/42), taking into account the comments made by regional groups at the session. Further compilations of the Handbook are contained in documents TD/B/RBP/49 and TD/B/RBP/58 and Add. 1 submitted to the seventh and eighth sessions of the Group respectively.

3. At its eighth session, the Intergovernmental Group of Experts, in its agreed decisions and conclusions, requested the UNCTAD secretariat to prepare for the ninth session of the Group, as well as for the Review Conference, a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/1236-TD/B/RBP/67, annex I).

4. Accordingly, the UNCTAD secretariat prepared a note submitted to the ninth session of the Group (document TD/RBP/71) which contained commentaries on and texts of restrictive business practices legislation of Germany and Finland.

5. Further, the secretariat prepared a note, TD/RBP/CON.3/5 and its extract, for the Second United Nations Conference to Review All Aspects of the Principles and Rules, held from 26 November to 7 December 1990. The note and the extract contain commentaries received from Denmark, Poland, Spain and the United States of America, and reproduce in the annex texts of the RBP laws of these countries in the languages in which they were received.

6. In its resolution on "Strengthening the implementation of the set," the Conference requested States to supply to the UNCTAD secretariat annually or as the information becomes available if appropriate, preferably in one of the official languages of the United Nations, inter alia, information concerning new restrictive business practice legislation or amendments to existing laws, with a copy of the legislation or amendments. It also requested the UNCTAD secretariat, on the basis of the information received and of other available information, inter alia, to complete and update the Handbook on Restrictive Business Practices Legislation.

7. The present note contains a commentary received from Norway on the Price Act 1953, Resale Price Maintenance 1957 and Horizontal Price Cooperation 1960, and reproduces in the annex the texts of these laws, and Act No. 8, 158, 1991, on Provisions for Protection of Competition and Other Measures of Brazil. A commentary by the Government of Brazil on its law will be issued as an addendum to this note.

8. Thus, to date, the UNCTAD secretariat has issued notes containing commentaries and the texts of restrictive business practices legislation from 17 countries: Brazil, Canada, Chile, Denmark, Germany, Finland, France, Kenya, Pakistan, Poland, Portugal, the Republic of Korea, Norway, Spain, Sri Lanka, Sweden, and the United States of America.

9. The Secretary-General of UNCTAD, in his note of 4 June 1991 (TD/B/420/8(5)Q), requested States which so far had not done so, or which had introduced new or amending RBP legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format supplied (see below). In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited, as called for by the Intergovernmental Group, to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

10. The UNCTAD secretariat is grateful to the Governments that have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so, or which have amended or enacted new legislation since their last contribution, to supply texts of their legislation, together with commentaries, along the lines of the format mentioned above.

Format for contributions to the Handbook

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;

(b) The extent to which the practices, acts or behaviour in Section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;

(c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

COMMENTARY BY THE GOVERNMENT OF BRAZIL ON ACT NO. 8,158 OF JANUARY 1991 ON PROVISIONS FOR THE PROTECTION OF COMPETITION AND OTHER MEASURES

The commentary will be issued later as an addendum to this document

COMMENTARY BY THE GOVERNMENT OF NORWAY ON ITS COMPETITION LAW

The Price Act 1953
Resale Price Maintenance 1957
Horizontal Price Cooperation 1960

A. Introduction

The legislation in Norway was introduced in 1920. It has been amended several times since.

The reasons for introducing this legislation and the objectives of it correspond to a certain degree with those stated in Section 1 of the present Act of 26 June 1953. The Act has as its purpose to serve as a means in general economic policy by:

(a) Promoting a desirable development of prices in the public interest, as well as counteracting unreasonable prices, profits and terms of business;

(b) Preventing the distribution of higher dividends than are deemed justified;

(c) Safeguarding against improper marketing or competitive conditions, and against restrictive business practices which are unreasonable or detrimental to the public interest.

A major principle of the Price Act is that agreements in restraint of trade are not illegal per se, but that they are to be reported to the Price Directorate, to be registered and made publicly known. If the Price Directorate concludes that an agreement is hurting the economy or is unfair to third parties, it may instruct the participants to the agreement to abolish or change it.

Both vertical and horizontal price fixing have, however, been declared illegal per se on the basis of the Price Act. A Royal Decree of 18 October 1957 outlaws resale price maintenance and a Royal Decree of 1 July 1960 outlaws horizontal price cooperation and agreements concerning the offering of tenders and bids. A number of different types of price fixing have been exempted from these decrees.

It should be noticed that a committee is at present working on a proposition to be presented for the Odelsting (one of the two sections of the Storting, the Norwegian Parliament), concerning new competition legislation. The committee aims to have the proposition ready by summer 1991.

B. The administrative system

General provisions concerning the functions of the various authorities are contained in the Price Act.

The Price Council tries cases concerning refusal to deal (Section 23), exclusion of members of an organization or fines/punishment sentenced on a member by an organization (Sections 40, 41 and 42 (a)). The Council also tries appeals of the Price Directorate's decisions concerning the obligation to register agreements in restraint of competition (Sections 33, 34), as well as approving the length of such agreements (Section 37).

The Ministry and the Price Directorate are central administrative authorities for control and regulatory activities under the Act. The majority of cases are decided by the Directorate. The Directorate assists the Storting, the Cabinet or the Ministry concerned by preparing the matters to be decided by these authorities and by implementing their decisions. The Directorate also prepares matters to be considered by the Price Council and carries out the decisions of the Council. Furthermore authority to instruct the local bodies and other auxiliary bodies has been vested in the Price Directorate.

It should be noted that the Act to a very large extent authorizes delegation of the power to make decisions. For example, Section 24 of the Price Act confers upon the King the power to issue such regulatory provisions as mentioned in the section. When the Act refers to the King, it is in actual fact the Cabinet, in plenary assembly, presided over by the King, upon which the power is conferred. Whenever a reference to the King is made, it is either a reference to the Cabinet and King, or the Minister of the Ministry in question. However, by delegation of authority most of these provisions are issued by the Ministry concerned and by the Price Directorate. Only the most far-reaching general decisons are actually made by the King. The same applies with regard to the decisions made under Section 42.

The courts may scrutinize the decisions of the administrative authorities in accordance with the general rules in Norwegian law concerning appeal of administrative decisions.

C. The scope of the Price Act

The Price Act applies to business activities of every kind irrespective of the type of goods, services or rights concerned, and irrespective of whether it is private or run by governmental or local authorities. The Act shall not apply to wages and terms of work when in employment.

If an activity covered by this Act falls within the scope of other statutory provisions for regulation or control the King may issue rules defining the mutual limitation of jurisdiction of the authorities involved.

D. Summary of the main sections of the Price Act

Restrictive business agreements, dominant enterprises and certain behaviour such as refusal to deal are subject to different types of control. Following a few general comments, a summary is given of the main provisions of the Price Act and of provisions given under the regulatory power of the Act dealing with the different types of restrictive business practices.

Refusal to deal
(Section 23)

The Price Council may forbid enterprises to refuse to have business dealings with another enterprise or with a consumer, if the Council finds that such refusal would be detrimental to the public interest, or that it would have an unreasonable effect on the other party. It is regarded as a refusal if one party is willing to have business dealings only on terms which the Council considers to be unreasonable or unusual.

The Council may, if so requested by a party intending to refuse business dealings or to urge others to do so, give an advance ruling as to whether such refusal will be forbidden or allowed. Otherwise, the Council cannot make a decision under the first paragraph before refusal is a fact, or a threat thereof or incitement thereto has been committed.

In order to ensure that the purpose of a prohibition under the first paragraph is attained, the Price Council may issue supplementary rules, which inter alia may require enterprises to have or maintain business dealings on such terms as the Council prescribes, and may prohibit incitement and other complicity in the refusal to deal.

If a refusal of the kind mentioned in the first paragraph or threat or an incitment thereto has caused financial damage to the other party, the latter may demand compensation. This applies irrespective of whether or not the Council has forbidden such refusal, but not if the Council has decided that such refusal shall be permitted.

General regulatory power
(Section 24)

1. In furtherance of the aims mentioned in Section 1, litrae (a) and (c), the King may issue:

(a) Rules concerning maximum prices, minimum prices, price freeze, price calculation, discounts, gift offers, maximum profit margins, terms of delivery and payment and other rules with regard to prices, profits and terms of business;

(b) Rules contending against unnecessary middlemen's activities and unfair competitive conditions;

(c) Rules concerning estimates of costs, procedure regarding offers, contracts and settlement of accounts and other rules which may be needed to facilitate control.

Such rules have been issued by Royal Decree of 18 October 1957. See Section F below.

Obligation to notify restrictive business arrangements
(Section 33)

Under rules to be issued by the King, the following shall be reported to the Price Directorate:

1. Associations or enterprises which regulate or have as their purpose to regulate prices, profits, calculations of costs, terms of business, production or distribution within the realm.

2. Restrictive agreements or other arrangements made by enterprises not organized in an association with a separate governing body, if the agreement or arrangement has such purpose or such effect as mentioned in subsection (1).

3. Restrictive provisions made by enterprises that are subject to the obligation to notify under Section 34, when the provisions have such purpose or such effect as mentioned in subsection (1).

The obligation to notify shall apply irrespective of whether the arrangement is implemented by means of binding or guiding provisions or by other means. Unless otherwise prescribed by the King, the obligation to notify shall also apply to an association, agreement, arrangement or provision which has come into being in pursuance of legislation.

The obligation to notify according to subsection (1) rests with the governing body of the association. If the registered office is outside the realm, the obligation to notify rests on the representative of the association and its members within the realm. The obligation to notify restrictive agreements and other arrangements mentioned in subsection (2) rests on any participant who is engaged in business activities within the realm as well as any representatives within the realm of participants domiciled abroad. The obligation to notify restrictive provisions mentioned in subsection (3) rests with the enterprise which has made such provisions.

The report shall contain a detailed description of the restrictive business arrangements and information on matters of importance for the supervision of such arrangements. In addition to the initial or principal report, supplementary report shall be submitted on changes or new circumstances. The rules governing reports shall contain further provisions on the data to be furnished.

Obligation of dominant enterprises to notify
(Section 34)

Under rules to be issued by the King, the following enterprises shall submit a report to the Price Directorate:

1. Enterprises assumed to be producing or distributing at least one quarter of the total production or distribution in the realm of one or more commodities produced or distributed by the enterprise, or of services provided by it. If an enterprise has decisive influence over enterprises within the real other than those which are operated in the former enterprises' own name, all the enterprises concerned shall be considered as one in determining the question of obligation to notify.

2. Persons who own or are responsible for the management of enterprises which are subsidiaries or subject to the decisive influence of:

(a) A foreign firm which may be assumed to have substantial influence on the prices in one or more countries of one or more commodities or services, or which is a participant in an association of firms which, together, may be assumed to have such influence;

(b) An association of foreign firms or of Norwegian and foreign firms which may be assumed to have such influence as mentioned under litra (a).

The provisions of the last sentence of subsection (1) shall apply mutatis mutandis.

3. Enterprises which, although not covered by subsections (1) or (2), have received specific instructions from the Price Directorate to submit a report, because they are engaged in activities which are of such importance for one or more trades within the realm that the Directorate considers special supervision to be necessary. The obligation to notify does not apply to Government monopolies.

The report shall contain a detailed account of the nature and extent of the activities which are carried on, of the connections existing between the firm or firms operated by a person in his own name and other forms or associations of firms as well as other matters of importance for the supervision thereof. In addition to the principal report, supplementary reports shall be submitted on any changes or new circumstances. Further details of particulars to be reported shall be given in the provisions governing reports.

Exclusion of members and refusal to admit members
(Section 41)

If a restrictive association has excluded or refused to admit an enterprise as a member, the Price Council may - on receiving a complaint or on its own initiative - reverse the exclusion or direct the association to admit the enterprise concerned as a member, provided that the Council is of the opinion that the exclusion or refusal is unjust to the enterprise concerned, or that is contrary to the public interest.

The provisions of the first paragraph shall apply with regard to participation in restrictive agreements and other arrangements.

Amendment, annulment and prohibition of Restrictive Business Practices
(Section 42)

The King may amend or annul any regulation which has been made by a restrictive association if it is deemed likely to have a harmful effect on production, distribution or other business activities within the realm, or the regulation is otherwise considered unreasonable or detrimental to the public interest. Such prohibitions or stipulations deemed necessary to ensure that the purpose of the annulment or amendment is achieved may be issued in connection with the decision.

If the measures taken under the preceding paragraph do not achieve their purpose, or are not considered to be sufficient, the King may dissolve the association. Prior to such dissolution an opinion shall be obtained from the Price Council. In connection with the dissolution of an association, the King may also order the dissolution of a company considered to be part of the association and/or the company. The King may also issue such prohibitions and stipulations deemed necessary to ensure that the purpose of the dissolution is achieved.

The provisions of the first paragraph shall apply to restrictive business agreements and other arrangements, and to restrictive regulations made under such agreements or arrangements or imposed by dominant enterprises which are subject to the obligation to notify under Section 34.

The King may forbid particular associations or groups of enterprises, in particular dominant enterprises subject to the duty to notify or enterprises in particular trades to implement restrictive regulations, agreements or arrangements when such restraints of competition may be assumed to have such effects as mentioned in the first paragraph or if prohibition is found necessary to further such competition as is desirable from the public point of view. Under similar conditions the King may lay down a general prohibition of particular types of restrictive business practices. Under such conditions as mentioned in the first and second sentence the King may also lay down other rules against restraints of competition or particular types of restrictive business practices.

This section is widely used to intervene in restrictive business practices. All horizontal cooperation restricting competition in the form of agreements, clauses or guidelines can be subject to intervention. They can either be annulled, amended or prohibited. To ensure that the purpose of the intervention is achieved, the authorities have the power to issue the necessary orders. Should these actions not suffice, the organization can be dissolved.

Certain restrictive practices are prohibited by Royal Decree of 1 July 1960, making these practices invalid per se. See Section E below.

An example of intervention

Section 42 has been used to prohibit a major producer of paint, stain and lacquer products from using a certain "concentration bonus". The bonus was given to wholesale dealers at an increasing rate depending on the amount of the producer's products they purchased. The authorities believed that with the introduction and further use of the bonus the company was exploiting their market power, as they have a 60 per cent share of the market of paint, stain and lacquer products. It was found that the bonus limited the other producers' possibilities of competing, and that it presumably gave the wholesale dealers strong economic incitement to exclude other producers. Furthermore, the authorities also took into consideration the fact that the price the wholesale dealers were offered did not mirror the production costs of the products, and thus contributed to an inefficient use of resources. The producer was therefore prohibited from using its "concentration bonus" and any other bonus producing the same effect.

Purchase of enterprises
(Section 42a)

These provisions apply to purchases of enterprises. The term purchase of enterprise also includes mergers, purchase of shares or parts of an enterprise.

If the Price Council finds that such a purchase will lead to or reinforce a major restraint on competition, and that this will be harmful to public interests it may:

1. Forbid the purchase and issue provisions which seem necessary to secure that the intention the decision of forbidding the purchase is fulfilled;

2. Impose a duty to sell shares or parts of the enterprise which have been purchased in order to gain ownership of the enterprise;

3. Issue other provisions to prevent the purchase restraining competition in ways which are harmful to public interests.

The Price Council can ordinarily only intervene by this section after the parties of the deal concerning the purchase have been given the opportunity to accept a voluntary solution.

The King issues provisions concerning the time-limit for forming a decision described in this section. The King may in addition issue provisions concerning the enforcement, the supplementing and the rules of procedure of this statute. This includes the authority to issue provisions concerning notification to the Price Directorate of purchases in certain trades or by certain enterprises or participants thereof.

Restrictive Business Arrangements applicable abroad
(Section 43)

The provisions of the Act regarding Restrictive Business Arrangements shall not apply to:

(a) Restrictive business associations which have their registered office within the realm, but which have only made, and whose only purpose is to make, restrictive business regulations applicable in other countries, or to trade and commerce between other countries;

(b) Restrictive business agreements, arrangements or regulations made by enterprises within the realm, when such agreements, arrangements and regulations are of the nature mentioned under litra (a);

(c) The participation of Norwegian enterprises in foreign restrictive business associations, agreements or other arrangements of the nature mentioned under litra (a).

The Price Directorate shall supervise such restrictive business arrangements as mentioned in litrae (a) and (b), with a view to taking action regarding matters which may have detrimental effects on Norwegian interests, or which may be assumed to be contrary to obligations undertaken by Norway in

an international agreement. Similar supervisions shall be exercised in respect of the participation by Norwegian enterprises in such restrictive business arrangements as mentioned in litra (c). The King may issue rules concerning the obligation to notify as a basis for supervision.

Penalties imposed upon individuals
(Section 52)

Any person who wilfully violates any provisions of this Act or of rules made pursuant thereto, or which are maintained in force thereunder, and which are not concerned with the organization and functions of the regulating or controlling authorities, shall be liable to a fine or to imprisonment for a maximum of one year, or both. The same penalty shall apply to any person who wilfully aids or abets in such violation. Any person who has purchased goods, or a right, or has received a service at an unlawful price, shall only be liable to penalty as an accessory if he had encouraged or incited the violation.

In particularly serious circumstances, the offender may be sentenced to imprisonment for a maximum of three years, to which a fine may be added at the discretion of the Court.

Penalties imposed on corporate bodies
(Section 53)

If a punishable offence mentioned in Section 52 has been committed by any person who has acted on behalf of a corporate body, a foundation or an association, the corporate body, foundation or association may be sentenced to a fine and deprivation of the right to carry on business, provided, however, that this shall only be done when the violation has been committed in furtherance or in the interests of the corporate body, foundation or association, or it may be assumed to have derived substantial advantage from the violation.

E. Provisions concerning horizontal price cooperation
(Royal Decree of 1 July 1960)

Section 1 of the provisions contains a general prohibition of restrictive arrangements with regard to prices, rates of profit, "gift offers" and rebates. The prohibition applies to all such kinds of regulations except arrangements covered by the provisions on resale price maintenance (cf. Section 8). In addition to strictly horizontal agreements concluded between enterprises engaged in the same stages of production or distribution, the prohibition also applies to regulations which concern enterprises engaged in different stages, unless the agreement is covered by the provisions on resale price maintenance.

Section 2 contains a specific prohibition of agreements in respect of tenders. Price agreements concerning tenders are also covered by the provisions contained in Section 1. The specific prohibition of regulation in respect of tenders is issued because such regulations may be established not only by price agreements, but for example by agreements stating that certain enterprises shall not submit tenders or that tenders shall be allocated between certain enterprises.

Section 3 contains a general prohibition of inducing enterprises to charge higher prices or stipulate higher rates of profit or to grant "gift offers" or rebates other than such as they themselves find reason to apply.

Certain economic sectors are exempted from the prohibition (cf. Section 5).

General exceptions
(Section 5, Royal Decree of 1 July 1960)

The provisions in the Royal Decree shall not apply to:

(a) Exports;

(b) Sale or delivery of products of Norwegian agriculture, forestry or fisheries by producers or producers' organizations in agriculture, forestry or fisheries;

(c) Sale or delivery by a joint sales organization established by an association or group of enterprises, or the settling of accounts between such an organization and its members;

(d) Newspapers.

Under Section 6 the authorities may grant exemption from the provisions contained in Sections 1-4.

The great majority of applications for exemption were decided during 1961. Out of a total of some 600 associations and groups covered by the prohibition, approximately one third were granted exemptions. The remaining ones had to abolish restrictive business practices covered by the prohibition.

As a rule, exemptions are granted either for a fixed period or provisionally. They may be withdrawn at any time if they are no longer considered necessary or if they lead to excessively high prices, rates, profit or otherwise are considered unreasonable or contrary to public interests (cf. Section 6).

The exemptions are under current consideration and evaluation.

F. Provisions concerning resale price maintenance
(Royal Decree of 19 October 1957)

The provisions make a distinction between collective and individual price maintenance. Collective resale price maintenance must not be carried out without prior approval of the Price Directorate. This applies regardless of whether the price maintenance is of a binding or a guiding nature.

Nor may any individual supplier practise binding regulation on the prices charged or the profits taken by the retailer. But the individual supplier may guide the retailer with regard to prices provided that it is clearly stated that the retailer may charge lower prices. Nor may the retailers in any way be induced to charge prices recommended by the supplier. Reference is made to Sections 2 and 5.

Under Section 9 of the Decree, the Price Directorate may grant exemptions from Sections 1-7 when such actions are called for by special circumstances and are considered consistent with public interests.

Few exemptions have been granted, the most important being the exemption granted for bookstores.

ANNEXES

I. BRAZIL: Act No. 8,158, 1991

Provisions for the Protection of Competition and Other Measures

II. NORWAY: Competition Law:

- The Price Act 1953
- Resale Price Maintenance 1957
- Horizontal Price Cooperation 1960

Annex I

BRAZIL: ACT INSTITUTING PROVISIONS FOR THE PROTECTION OF COMPETITION, AND OTHER MEASURES

[Translated from Portuguese]

Acts of the Legislature

Brasilia, 8 January 1991
170th year of Independence
and 103rd year of the Republic

Act No. 8,158 of 8 January 1991
Instituting Provisions for the Protection
of Competition and Other Measures

I, the PRESIDENT OF THE REPUBLIC,

Hereby announce that the National Congress decrees and I sanction the following Act:

Art. 1. It shall be the responsibility of the National Secretariat for Economic Law (SNDE), an agency of the Ministry of Justice, to devise and propose appropriate measures for the purpose of rectifying anomalies in the behaviour of economic sectors, undertakings or establishments, and of their administrators or controllers, liable to disrupt or affect, directly or indirectly, price formation mechanisms, free competition, freedom of initiative or the constitutional principles of the economic order.

Single paragraph. It shall also be the responsibility of the SNDE to adopt the necessary measures for the punishment of the offences provided for in Act No. 8,002 of 14 March 1990.

Art. 2. The National Secretariat for Economic Law (SNDE) shall act in such a way as to prevent the following distortions from occurring in the market:

(a) The fixing of prices of goods and services below the respective production costs, and the artificial fixing of quantities sold or produced;

(b) Restriction of the entry or existence of competitors, in the local, regional or national market;

(c) Prevention of access by competitors to the sources of inputs, raw materials, equipment or technology, or to distribution channels;

(d) The regionalized control of the market by undertakings or groups of undertakings;

(e) Control of the distribution or supply network by undertakings or groups of undertakings;

(f) The formation of conglomerates or economic groupings by means of direct or indirect share control or the establishment of joint administration between undertakings with a view to inhibiting free competition.

Art. 3. Any agreement, joint decision by undertakings, act, conduct or practice aimed at, or producing the effect of, dominating the market in goods or services, prejudicing free competition or arbitrarily increasing profits shall constitute an infringement of the economic order, even if the aims pursued are not attained, such actions to include:

(i) Imposing purchase or resale prices, discounts, conditions of payment, minimum or maximum quantities or profit margins, and establishing prices through the use of devious means;

(ii) Limiting or preventing the access of new undertakings to the market;

(iii) Dividing the markets in finished or semi-finished products or services, or the sources of supply of raw materials or intermediate products;

(iv) Fixing or charging, in connivance with a competitor in any form, prices and conditions for the sale of goods or the performance of services;

(v) Regulating markets through an agreement aimed at limiting or controlling research or technological development, or the production and distribution of goods or services;

(vi) Impeding investments intended for the production of goods or services;

(vii) Refusing, unjustifiably, the sale of goods or the performance of services within the standard terms of payment for commercial uses and practices;

(viii) Making the sale of a product subject to the purchase of another product; or to the use of a service, or making the performance of a service subject to the use of another service or to the purchase of a product;

(ix) Impeding or disrupting the continuity of trade relations of indeterminate length, with the aim of dominating the market or causing difficulties in the operation of another undertaking;

(x) Preventing the exploitation of industrial or intellectual property rights or technology;

(xi) Abandoning, causing to be abandoned or destroying a farm or plantations with the aim of impeding or preventing competition or obtaining arbitrary profit;

(xii) Destroying, rendering unusable or monopolizing without justifiable need raw materials or intermediate or finished products, and destroying or rendering unusable equipment intended for their production, distribution or transport or impeding its operation;

(xiii) Selling goods or performing services without a profit margin, with the aim of achieving market domination;

(xiv) Importing or exporting goods or marketing them below the price charged in the exporting country to the detriment of a competitor based in Brazil;

(xv) Securing or influencing the adoption of uniform or agreed commercial conduct by competitors;

(xvi) Creating difficulties for the formation, functioning or development of undertakings;

(xvii) Establishing or participating in an association or entity of any nature whose aim or effects comprise any of the practices forbidden by this Act;

(xviii) Acting or failing to act, in connivance with competitors, through parallel conduct whose aim or effects are tantamount to any of the practices specified in this Act.

Art. 4. The SNDE shall act ex officio, in response to a challenge by an organ or agency of the Public Administration, or on the basis of a representation of any interested party.

Art. 5. The SNDE, on learning, through evidence or indications, of the occurrence of an offence provided for in this Act, shall, within eight days, notify the agent suspected of being responsible in order that he may provide clarification within a period of 15 days, which may be extended at the discretion of the SNDE for such time as it may deem appropriate to the case.

First paragraph. The agent shall be authorized to present a preliminary defence, together with the clarification requested, and to demand the production of evidence of any kind relevant to the complaint.

Second paragraph. For the purpose of verifying the fact, the SNDE may order appropriate measures to be taken and require, on a confidential basis, the agent, any organ or agency of the Public Administration, undertakings, individual firms, establishments, administrators or controllers to produce, within a period of 15 days, which may be extended as provided for in the preliminary paragraph of this article, such documents, information or clarification as it may deem necessary.

Third paragraph. When the case involves an artificial price reduction through the importation, in whole or in part, of a foreign product, the SNDE shall, in addition, report the matter to the Ministry of Economic Affairs, the Treasury and Planning for the purposes of the adoption of the appropriate measures.

Art. 6. When the material compiled in the manner provided for in the preceding article has been analysed, the SNDE shall either:

(a) File the proceedings if, for well founded reasons, it considers as non-existent or unsubstantiated the events that gave rise to the institution of proceedings; or

(b) Address a report to the agent in order that he may, within a period of 15 days, which may be extended at the discretion of the SNDE for such time as it may deem appropriate to the case, establish his defence proving the representation to be inadmissible.

Art. 7. If the representation proves admissible, the SNDE shall, in a final detailed report which shall state the grounds for its opinion, recommend to the agent the appropriate corrective measures setting a time-limit for their implementation, and shall transmit the proceedings to the Administrative Council for Economic Protection (CADE) for the purposes of the measures within its competence, which shall be adopted within a period of 120 days, which may be extended for a further 90 days.

First paragraph. If the recommendation is not complied with, the SNDE shall, according to the case in question, take one or all of the following measures:

(a) Declare the agent not qualified to enter into competitive bidding or a contract, and publish the decision in the official journal;

(b) Include the agent in the National Consumer Protection Register;

(c) Recommend that the agent should not be allowed any federal taxes owed by him to be paid in instalments;

(d) Request the CADE to discuss the unlawful practice, on a preliminary basis, and order its immediate termination, if necessary, until a final judicial decision is taken on the case.

Second paragraph. The measures taken by the SNDE pursuant to this article shall remain in force until the agent has fully complied with the entire substance of the recommendation, in which case the provisions of the third paragraph shall be put into effect.

Third paragraph. When the SNDE has assured itself that the agent has fully complied with the recommendations, and provided that no repetition of an offence is involved, the penalties adopted under subparagraphs (a), (b) and (c) of the first paragraph shall be cancelled and the appropriate notification shall be made to the CADE, which shall consider whether or not any proceedings already initiated shall be suspended.

Fourth paragraph. In the case of repetition of an offence, the penalties imposed by the SNDE shall remain in force for a period of not less than 12 months and not more than 36 months as from the date of recognition, by the SNDE, of the termination of the practices that gave rise to the penalties.

Art. 8. Any proceedings originating from the SNDE pursuant to the preceding article shall be heard by the CADE irrespective of any further measures taken or the setting of a time-limit for final pleadings.

Art. 9. When the representation has been found to be inadmissible, the SNDE shall proceed to file the case.

Art. 10. All the parties concerned may address inquiries to the SNDE or the CADE on the legitimacy of acts liable to give rise to restriction of competition or economic concentration.

First paragraph. A response shall be made to the inquiry within 60 days. No penalty may be imposed on the party making the inquiry by virtue of an action relating to the subject of the inquiry taken between the end of this period and the expression of an opinion by the SNDE or the CADE.

Second paragraph. The opinion expressed in the consultation procedure shall be binding on the SNDE and the CADE.

Art. 11. The consultation procedure shall be governed by the internal rules of the SNDE and the CADE.

Art. 12. At any stage of the preliminary investigation in the administrative proceedings, execution or intervention, the SNDE and the CADE may adopt preventive measures when there is a justified fear or indication that the party challenged, personally or through a third party, may cause or endeavour to cause severe and damaging harm to free competition or to the right of others or that he is rendering ineffectual the final result of the proceedings.

First paragraph. Failure to comply with the preventive measure shall be punishable by a daily fine in an amount not less than 10,000 times the value of the National Fiscal Treasury Bonus, or any equivalent reference sum in lieu of that value, in effect on the date of actual payment.

Second paragraph. The value of the fine may be increased 10 times if its ineffectiveness is demonstrated. The fine shall be payable until the preventive measures are complied with.

Third paragraph. The amount received in payment of the fines referred to in the preceding paragraphs shall be paid into the fund provided for in Act No. 7,347 of 24 July 1985.

Art. 13. Article 74 of Act No. 4,137 of 10 September 1962 shall be amended to read as follows:

"Art. 74. Amendments, agreements or conventions in any form that may limit or reduce competition between undertakings shall be considered valid only if, within 30 days of their conclusion, they are submitted for examination and consent by the SNDE, which for the purposes of their approval shall consider whether all the following requirements have been fulfilled:

(a) Their purpose shall be to raise production, to improve the distribution of goods or the supply of services, to promote efficiency and technological or economic development, or to increase exports;

(b) The resultant profits shall be distributed equitably between the persons benefiting from them on the one hand, and the consumers or end-users, on the other;

(c) The limits strictly necessary to ensure that the objectives set are attained shall not be exceeded;

(d) They shall not entail the elimination from competition of a substantial part of the market in relevant goods or services.

First paragraph. The instruments referred to in this article may also be considered valid, even if all the conditions provided for in the preliminary paragraph are not met, when the restriction contained in them is necessary for predominant reasons relating to the national economy and the common good, and provided that the restriction is of a predetermined duration and, at the same time, it is found that, without its implementation, the consumer or the end-user could suffer prejudice.

Second paragraph. Included in the instruments referred to in the preliminary paragraph are those which aim at any form of economic concentration, either through the merger or incorporation of undertakings, the formation of a company to exercise control of undertakings, or any other form of company grouping or economic concentration which would involve the participation of the undertaking or resultant group of undertakings in 20 per cent of a significant market in goods or services.

Third paragraph. When the instruments referred to in this article have been approved by the SNDE, their validity shall be retroactive to the date on which they were concluded; if they have not been evaluated by the SNDE within 60 days of their submission, they shall automatically be considered valid, complete and in good form, unless it is substantiated that the parties to them fail to present any clarification requested or documents necessary for the examination within the time-limit set by the SNDE, in which case the time-limit for the examination shall be extended in proportion to the delay in the submission of the data requested.

Fourth paragraph. If the amendments, agreements or conventions referred to in this article are not effected on a suspensive basis or if they have already given rise to effects vis-à-vis third parties, including effects of a fiscal nature, the SNDE shall, if it decides not to approve them, order the parties to take appropriate steps to terminate them, in whole or in part, through nullification, splitting, sale of assets, partial cessation of activities or any other act or measure by means of which any effects prejudical to competition arising therefrom may be eliminated.

Fifth paragraph. Any parties considering taking action of the kind referred to in this article may, before taking such action, address an inquiry to the SNDE on the validity of the action to be taken; the inquiry shall be evaluated within 60 days, and, if no response is made within this period, the parties may regard themselves as having approval for the action in question, except in respect of the situation provided for in the last part of the third paragraph above.

Sixth paragraph. Without prejudice to the other legal sanctions, including those contained in article 11 of Delegated Act No. 4 of 26 September 1962, as amended by Act No. 7,784 of 28 June 1989, if this applies, failure to submit the instruments provided for in this article for registration and approval shall give rise to the initiation of proceedings within the SNDE, for the purposes of the measures within its competence."

Art. 14. The Administrative Council for Economic Protection (CADE), established by Act No. 4,137 of 10 September 1962, an adjudicating organ within the Ministry of Justice, with the powers provided for in the above-mentioned Act and in the present Act, shall operate in confirmation with the SNDE within the Ministry of Justice, which shall provide it with personnel and administrative support.

Single paragraph. The CADE shall be composed of four advisers, a chairman and an attorney, all prominent in the legal or economic sector, appointed by the President of the Republic, on the recommendation of the Ministry of Justice and after approval by the Federal Senate, for a renewable mandate of two years.

Art. 15. In the event of infringement of this Act or Act No. 4,137 of 10 September 1962, the CADE may recommend the expropriation of undertakings or their shares or quotas, which shall, in the shortest possible time, be sold through competitive bidding or on a stock exchange.

Art. 16. (VETOED)

Art. 17. (VETOED)

Art. 18. The mandates of the current CADE advisers shall expire on the appointment of the new incumbents, in accordance with this Act.

Art. 19. With the exception of those advisers, the President and the Attorney, the current posts and functions of the CADE shall become part of the structure of the SNDE.

Art. 20. The SNDE and the CADE may represent the Public Prosecutor, with a view to implementation of Act No. 1,521 of 26 December 1951.

Art. 21. The administrative decisions provided for in this Act shall be subject to appeal, whether spontaneous or ex officio, to the Minister of Justice within a time-limit of 10 days.

Art. 22. In the verification and rectification of the instruments or activities provided for in this Act, the authority concerned shall give primary consideration to their negative economic effects on the market, even if there is found to be no fraud or guilt on the part of the causative agents.

Art. 23. This Act shall enter into force on the date of its publication. The provisions defining offences and penalties embodied in Act No. 4,137 of 10 September 1962, and in other legal texts relating to practices involving abuse of economic power, shall be maintained.

FERNANDO COLLOR

(Signed)

Annex II

NORWAY: COMPETITION LAW

- The Price Act 1953
- Resale Price Maintenance 1957
- Horizontal Price Co-operation 1960

NORWEGIAN COMPETITION LAW

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I INTRODUCTION

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1. Legislation before 1953.

a) The Price Act of 1920.

In 1913, an "ad hoc" commission was appointed in Norway to prepare a proposal for legislation on the control of restrictive business practices. For various reasons the commission did not start this work until after the end of World War I. The commissions's final report with recommendations was submitted in August 1921.

However, in the meantime temporary control in this fields was established by a provisional Price Control Act of 6 August 1920. As a basis for the control the Act contained provisions on the obligation to notify and on the registration of restrictive business associations and groups of enterprises and of dominant enterprises. The public had access to the register and excerpts were published in a bulletin "Pristidende". The associations, groups and enterprises which were under the obligation to notify were placed under the supervision of the Price Directorate. In accordance with the comprehensive regulatory powers conferred upon the authorities by the Act, the authorities intervened if excessive prices or rates of profit or unreasonable terms of business were established through restrictive business arrangements or by dominant enterprises. Action was also taken against restrictive business practices which were unreasonable or contrary to the public interest. In matters of major importance, decisions were made by the King* or the Ministry concerned after a recommendation had been submitted by the Price Directorate and a statement had been given by a consultative body, the Price Council. In other cases, decisions were made by the Price Directorate and to a certain extent by local committees when the matters were of a local nature.

The most extensive form of intervention under the Act of 1920, was a temporary general prohibition of binding minimum prices, issued by Royal Decree of 25 September 1925. The prohibition also applied to a refusal of business dealings and to the application of fines or other coercive measures on the grounds that an enterprise had charged prices lower than those stated in pricelists,

* King i.e. the King in Government

or based on the fact that the rise in the international value of the Norwegian Krone had not a sufficient influence on the domestic price level. The Government, therefore, found it necessary to intervene against restrictive business practices which might hamper the fall in domestic prices. The prohibition was abolished as of 1 July 1926.

b) The Trust Act of 1926 with Amendments.

From 1 July 1926, the provisional Act of 1920 was replaced by a permanent Act of 12 March 1926. Some minor amendments were made to the Act in 1932 and 1938.

The new Act, known as the Trust Act, differed on important points from the Act of 1920.

The Act introduced a new system of administration. Two independent bodies were established, the Control Office and the Control Council. The Control Office, which replaced the previous Price Directorate, was the administrative authority. The Office carried out the supervision of restrictive business arrangements and dominant enterprises and handled other matters falling within the scope of the Act. The Office also prepared the cases for the Control Council and carried out its decisions. The Control Council functioned as an administrative court. It could not act on its own initiative, but dealt with matters submitted by the Control Office. The Control Office was obliged to submit certain cases to the Council at the request of the interested parties. In other cases, the Control Office itself decided whether proceedings should be instituted. This applied with regard to the introduction of price regulation or the abolition of restrictive business arrangements and with regard to boycotts or exclusive dealing arrangements when no complaint had been filed. The Head of the Control Office attended the meetings of the Council and submitted a report with recommendations after the hearing of the various interested parties. Certain decisions with regard to the abolition of restrictive business arrangements could be brought before a special board of appeal. Otherwise, there was no appeal of the decision made by the Control Council. However, the Council could on its own initiative amend or abolish a decision, if the circumstances on which the decision was based were changed or if new information, which called for another decision, was submitted. The Act left it to the local authorities to decide whether there was a call for local select committees to supervise the observance of the provisions on price regulation or to introduce regulations of local application in accordance with authority delegated from the Control Council or the Control Office. Only a

few of the 750 county districts* found it necessary to maintain such select committees. By the end of 1928 local select committees were in operation in 18 urban and 48 rural districts. Later several of the committees were abolished.

The new Act retained the system of registration of restrictive business arrangements and dominant enterprises. However, the access to the register was restricted. Access was dependent on the prior approval of the Control Council, an such approval was only to be granted if required in the public interest. However, excerpts from the register were published in the same way as before.

A general prohibition of unreasonable prices had been issued under the previous legislation. Such a prohibition, somewhat modified, was also included in the Trust Act. Instead of the comprehensive, general regulatory powers conferred upon the authorities by the Act of 1920, the Trust Act contained specified provisions on supervision and intervention.

The power to introduce price regulation was restricted so that the Control Council could only intervene after a recommendation had been submitted by the Control Office, if the Council found that a restrictive business association, a group or a dominant enterprise, under obligation to notify, had fixes prices, rates of profit or terms of business which were unreasonable. The same applied if unreasonable prices, rates of profit or terms of business were established within a trade, if the competition was ineffective or carried out in such way that it could not be assumed to solve the problems. The Control Council could also impose minimum prices if it was found necessary to counteract price reductions which might lead to a excessive competition within a trade.

In addition to the provisions on regulation of prices, the Act contained a number of other provisions for the purpose of countering harmful restrictive business arrangements. An agreement to participate in a restrictive business association or arrangement could not, without the prior approval of the Control Council, be concluded for a longer term than one year or with a longer term of notice than three months. It was unlawful for restrictive business associations and groups to impose on their members fines or other penalties for infringement of a restrictive business arrangement considered unreasonable or contrary to

* See note page 15.

the public interest. The Act also contained prohibition of boycotts and exclusive dealing arrangements which were unfair or contrary to the public interest. On recommendation from the Control Office, the Control Council could determine whether a restrictive business practice, a boycott or an exclusive arrangement was of such harmful nature, as mentioned. The Act also conferred upon the Control Council the power to abolish restrictive business associations, agreements or provisions on a recommendation from the Control Office, if the Council found them detrimental or unfair or contrary to the public interest.

While in existence, the Control Council decided some 800 cases. On the basis of these decisions, a far larger number of cases were satisfactorily dealt with at the instigation of the Control Office.

c) The Emergency Price Regulation Legislation during the period 1 September 1939 - 31 December 1953.

Following the outbreak of World War II emergency price regulation was again introduced to counteract inflation. This emergency regulation, which was very comprehensive, was with various modifications, maintained until the end of 1953.

Price Regulation was based on provisional legislation which conferred upon the authorities extraordinarily comprehensive regulatory powers. The most important decisions were made by the King or the Ministry concerned, except during the wartime occupation. The preparatory work was carried out by the Control Office, now renamed the Price Directorate. The majority of cases were decided by the Directorate or by local authorities. The Price Directorate overtook the functions of the Control Office and the Control Council temporarily under the Trust Act.

As part of price regulation, a number of provisions concerning restrictive business practices were issued to prevent an unnecessary rise in prices. However, on the whole the control of restrictive business practices was kept in the background, partly on account of the great amount of work to be done in connection with the regulation of prices, partly because the restrictive business practices were of less importance during a period characterized by extensive public regulation of consumption, prices, production, sales, imports, exports, currency and so forth.

2. The Act of 26 June 1953 on Control of Prices, Profits And Restraints of Competition (The Price Law).

The provisional emergency legislation on price regulation and the Trust Act of 1926 was replaced by a permanent Act of 26 June 1953, on Control of Prices, Profits and Restraints of Competition. The new Act, which became effective on 1 January 1954, was amended by Acts of 25 June 1954, 28 March 1958, 17 June 1960 (Nos. 6 and 7), 22 December 1961 and 23 March 1962, 15 December 1967, 13 June 1969, 19 June 1969, 4 June 1976 and 8 July 1988.

The current Act is to a certain extent based on the Trust Act of 1926, but has a wider application. This is reflected in § 1, where it is stated that the Act shall have as its purpose to serve as a means in the general economic policy by:

a) Promoting such a development of prices as is desirable from the point of view of the public interest and counteracting prices, profits and terms of business* which are unreasonable;

b) Preventing the distribution of higher dividends than are deemed justified,

c) Safeguarding against improper marketing or competitive conditions, and against restrictive business practices which are unreasonable or detrimental to the public interest.

The supervision of restrictive business associations, groups of enterprises and dominant enterprises is, as under the previous legislation, based on an obligation to notify such associations and enterprises to a public register.

The Act contains a number of other detailed provisions on control of restrictive business practices. Furthermore, the Act confers upon the authorities comprehensive powers to intervene specifically or generally both for the purpose of regulating prices and for the purpose of counteracting restrictive business practices and agreements which are unreasonable or contrary to the public interest.

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* Se note page 12.

The most important general provisions concerning restrictive business practices issued until now are the prohibition of resale price maintenance* passed by Royal Decree of 18 October 1957, and the prohibition of horizontal price agreements and of agreements in respect of tenders, passed by Royal Decree of 1 July 1960. Exemptions may be granted from both these prohibitions. Further comments on the legislation and the application of the legislation will be made under chapter III.

3. The Underlying Principles of The Norwegian System on Control of Restraints of Competition and Dominant Enterprises.

The Norwegian legislation on restrictive business practices is based on the opinion that such practices may in various ways counteract economic progress and lead to unreasonable prices and terms of business, abusive methods of competition, discrimination between customers and districts and to other conditions that are unreasonable or detrimental to the public interest. However, it has not been found advisable to impose a general prohibition of all forms of restrictive business arrangements or tendencies to monopolize. In Norway such a prohibition would not be appropriate as it is recognized that in some cases such practices may be advantageous or justified. This question should be considered in the light of the general economic structure of the country.

In Norway there are approximately 4 million inhabitants. The country's economy is to a large extent dependent on international trade and shipping. As the average size of Norwegian enterprises is small, most of the enterprises are not able to achieve the advantages gained by large-scale operations. Under these circumstances co-operation between them may in some cases be necessary, especially in industry in order to cut costs or improve the quality of the products. Enterprises can, for example, co-operate in research, in specialization of production, in joint purchasing of raw materials or in joint distribution of products or through other rationalization activities which demand co-operation between two or more enterprises. Such co-operation should in the Norwegian opinion be allowed, provided that the restrictive arrangements are kept under effective control.

* For the definition of "Resale Price Maintenance", cf. § 1 of the Royal Decree of 18 October 1957, page 47.

Restrictive business arrangements may also be accepted in certain field or in certain cases even if they do not entail rationalization, if for other reasons they are considered necessary or justifiable. This may be the case in trades where competition is of an obviously abusive nature or in trades operating under adverse or difficult conditions. This is, for example, the case with Norwegian agriculture.

Restrictive business arrangements may also be accepted for other reasons. This will be elucidated under Section 3.

The Norwegian legislation in this field has been prepared with a view to the various circumstances which should be taken into account. The system of the Act is based on a close supervision of all forms of restrictive business arrangements effected by associations, agreements or other arrangements between enterprises. The supervision also covers dominant enterprises. As mentioned above the authorities are given wide powers to prevent or abolish abusive practices. Apart from intervention in special cases general prohibition may also be imposed on certain types of restrictive business practices which are extensively applied and deemed to be generally detrimental to the public interest. Such prohibition may be given a flexible form with a possibility of granting exemptions from the rules in particular cases.

The system established by the Act makes it possible to adjust intervention to changing economic conditions. For example, in times of depression with extensive unemployment, it may be necessary to take other actions than in times of full employment and general increase in prices.

To achieve the purpose of the Act it is essential that the authorities have experts at their disposal and that prompt decisions can be reached. This is the reason why the powers to make decisions under the Act are conferred upon the administrative authorities and not upon the courts. The provisions of the Act on general instructions and the rules on procedure and appeal serve as guarantees that the decisions are appropriate. The courts may review the decisions in accordance with the general rules concerning judicial review of administrative decisions.

II NORWEGIAN COMPETITION LAW. MAJOR LEGISLATION AND PROVISIONS.

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1. ACT ON CONTROL OF PRICES, PROFITS AND RESTRAINTS OF COMPETITION (THE PRICE LAW)

dated 26 June 1953
as amended by the Acts of 25 June 1954, of 28 March 1958, Nos. 6 and 7 of 17 June 1960, of 22 December 1961, of 23 March 1962, of 15 December 1967, of 13 June 1969, of 19 June 1969, of 4 June 1976, of 6 April 1984 no 17 and of 8 June 1984 no 55.

Section 1: Purpose and Scope of the Act

§ 1

Purpose of the Act.

It shall be the purpose of this Act to serve as a means in the endeavour to attain full employment and an effective utilization of production potentialities and to assist in counteracting marketing crises and in promoting an equitable distribution of the national income, by:

a) Promoting such a development of prices as is desirable from the point of view of the public interest and counteracting prices, profits and terms of business* which are unreasonable.

b) Preventing the distribution of higher dividends than are deemed justifiable.

c) Safeguarding against improper marketing or competitive conditions, and against restrictive business practices which are unreasonable or detrimental to the public interest.

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* The Norwegian expression "forretningsvilkår" covers all terms and conditions, other than the price, which are stipulated in commercial transactions (i.e. terms of pay- ment and delivery, rebates, etc.). It has been difficult to find a corresponding English word. The expression "trading conditions" has been contemplated, but the expression "terms of business" is preferable.

§ 2

Scope of the Act.

The Act shall apply to business activities of every kind, as defined in § 60, subsection 4, irrespective of the type of goods, services or rights concerned, and irrespective of whether it be private or carried on by governmental or local authorities. The Act shall not apply to wages and terms for work done in the employment of others.

If an activity covered by this Act falls within the scope of other statutory provisions for regulation or control the King may issue rules defining the mutual limitation of jurisdiction of the Authorities involved.

Rules issued pursuant to this Act may not be inconsistent with any resolution of the Storting.*

Section 2: Administration

§ 3

The Directing of Control and Regulation Activities.

Within the limits of the resolutions of the Storting under § 14, and in so far as the power to make decisions is not otherwise vested in the Storting, the King shall lay down the general rules governing control and regulation.

The Ministry concerned** shall be responsible for implementing the provisions of this Act in accordance with the resolutions and general instructions mentioned in the preceding paragraph, and shall issue further rules governing the activities of the authorities exercising control and regulation.

§ 4***

The Price Council.

The Price Council shall consist of seven members, with their deputies, appointed by the King. Their term of office shall be

* The Storting is the name of the Norwegian Parliament.
** Ministry of Consumer Affairs and Government Administration
*** Amended by the Acts of 25 June 1954, 13 June 1969 and of 8 July 1988. The amendments are incorporated in the text.

four years; except that the first appointment can be of shorter duration. Members and deputies are eligible for re-appointment. The King shall appoint the Chairman and Vice-Chairman of the Council from among its members. After hearing the opinion of the Council, the Ministry may appoint from among the members of the Council and their deputies select committees for consideration of specific matters.

The Chairman or Vice-Chairman and at least four other members or deputies constitute a quorum. A resolution is valid only when not less than four votes have been cast in favour of the decision.

The head of the Price Directorate or his delegate shall attend the meetings of the Price Council and of the select committees, but shall have no vote.

The Price Council is empowered to make decisions as provided for in §§ 23, 33, 34, 37, 40, 41 and 42 a (second and third paragraph) of the Act. The King may also authorize the Council to decide other matters. Further, the Price Council shall act as an advisory body in accordance with further rules issued by the King.

The Price Council shall submit reports to the Ministry on decisions taken. The King shall issue further rules concerning the organization and functions of the Price Council and the select committees.

§ 5

The Price Directorate.

The Price Directorate shall:

a) Assist in the preparation and implementation in matters to be decided by the Storting, the King, or the Ministry.

b) Prepare cases for the Price Council and carry out its decisions.

c) Prepare and implement measures of control and regulation within the jurisdiction of the Directorate.

d) Instruct and supervise the control and regulatory bodies subordinate to the Directorate, cf. §§ 6-8.

e) Otherwise assist in implementing the Act.

The King shall issue further rules concerning the organization and functions of the Price Directorate.

§ 6*

The Price Inspectorate.

The Price Inspectorate shall consist of Regional Offices, each under the direction of a regional manager. The King shall decide the number of Regional Offices, the regional divisions and the locations of the offices. The King may rule that the Price Committee in Oslo shall take the place of the Regional Offices of the Price Inspectorate in dealing with matters under this Act.

Under the supervision of the Price Directorate the Price Inspectorate shall be responsible for local control and regulation and otherwise perform the duties entrusted to them under this Act.

The King shall issue further rules concerning the organization and functions of the Price Inspectorate.

§ 7**

Price Committees in County Districts.***

Unless otherwise decided by the King, a price committee consisting of one or more divisions shall be established in each county district. If the councils of the districts concerned agree to it, the King may decide that two or more county districts shall have a joint Price Committee.

The Price Committee shall consist of not less than three members with their personal deputies.

* Amended by the Acts of 28 March 1958 and 22 December 1961, the amendments are incorporated in the text.

** Amended by Acts of 28 March 1958, of 23 March 1962 and of 15 December 1967. The amendments are incorporated in the text.

*** For purpose of local government, Norway is devided into "fylker" i.e. counties. The counties are further devided into "kommuner", i.e. county districts. County district means a municipal borough, an urban or a rural district.

The members and deputies shall be elected by the district council for a term corresponding to the election period of the district, but will continue to function until new members and deputies have been elected, although not longer than the first three months of the next election period. The provisions of § 10 of the County District Election Act of 10 July 1925 shall apply equally. Before the election of members by a district council, local associations of enterprises, co-operative societies, trade union, councils and other such local organizations as the King may decide, shall have the right to submit proposals within a period to be determined by the aldermen.

The Price Committee shall take part in the local work of control and regulation and otherwise perform the duties entrusted to them under this Act.

The county district shall defray the expenses arising from the activities of the Price Committee and may pay the members of the Committee a reasonable remuneration for their work. The expenses of a joint Price Committee shall be devided among the individual county districts as proposed by the Committee. In the event of disagreement among the county districts, the county Governor shall determine how to divide the expenses after hearing the views of the Regional Office of the Price Inspectorate. The State may contribute towards the expenses to the extent determined by the Storting.

The King shall issue further rules concerning the organization and activities of the Price Committees and the procedure to be followed concerning elections of members of the Committee.

§ 8

Other Control and Regulation Authorities.

The King may rule that public bodies, including local authorities, other than those mentioned in §§ 4-7, shall assist in control of regulation activities under the provisions of this Act. The King may issue rules concerning the functions of such bodies and their relationship to the control- and regulative bodies established under this Act.

The King may also determine that established or approved associations or select committees shall assist in control and regulation activities under the provisions of this Act. Any person appointed a member of such select committee or association, cannot refuse to perform this duty.

The King may rule that enterprises in the sector concerned shall meet approved expenses incurred by such select committees or associations in the performance of their control and regulation duties. The King shall make rules concerning payments to be made for this purpose and the disposal of the funds. Members may not without the consent of the Price Directorate, be offered or accept remuneration for the performance of their duties.

The King may issue rules regarding the functions of associations and select committees under this Act.

§ 9*

Delegation of Power.

The King may authorize the Ministry to act on his behalf under § 6 (first paragraph), § 7 (first paragraph), § 8, § 9 (sixth paragraph), § 10 (second paragraph), § 15 (third paragraph), § 24, § 25 (first sentence of third paragraph, cf. sixth paragraph), § 26 (first paragraph), § 30, § 42 (first, third and fourth paragraphs), § 42 a, § 45 (fifth paragraph) and § 49 (third paragraph). In other matters which this Act specifies as cases for the King's decision, authority may be delegated by the King to the Ministry, the Price Directorate or the regulating bodies mentioned in §§ 6-8 to issue rules and orders for supplementing or implementing decisions of the King.

The King may authorize the Price Directorate to act according to § 8 (second paragraph), § 9 (sixth paragraph), § 15 (third paragraph), § 24, § 25 (first sentence of the third paragraph, cf. sixth paragraph), § 26 (first paragraph), § 42 (first, third and fourth paragraphs) and § 42 a. This may also be done in cases where the Ministry itself has been authorized to make such decisions. The Ministry may also authorize the Price Directorate to issue rules supplementary to or for implementation of the decisions of the Ministry.

The Ministry and the Price Directorate may, within the limits of their authority to make decisions, delegate power to make decisions under § 24 and § 26 (first paragraph) to the regulating bodies mentioned in §§ 6-8. Furthermore, these bodies may be empowered to issue rules for supplementing or implementing decisions made by the Ministry or the Price Directorate.

* Amended by the Acts of 17 June 1960, 22 December 1962, 19 June 1969 and by the Act of 8 July 1988. The amendments are incorporated in the text.

Delegation of authority by the King, the Ministry or the Price Directorate to the bodies mentioned in §§ 6-8 may only be made in respect of matters particularly appropriate for decision by these bodies.

Even if a case falls within the limits of the authority of the Price Directorate, the Directorate shall, if time allows, obtain the approval of the Ministry in decisions involving questions of general principle, unless the Ministry has given prior instructions governing such decisions. Rules for the submission of such cases are issued by the Ministry.

The provisions of the preceding paragraph shall also apply to the relationship between the bodies mentioned in §§ 6-8 and their superior bodies, in accordance with rules made by the King.

In no case may the King authorize anyone but the Ministry to make decisions in matters concerning the regulation of prices fixed by local authorities for water supply, refuse disposal, gas, electric power, hospital services, schools and other institutions or enterprises of a monopolistic nature. In case of doubt the King shall rule whether or not a particular matter is of such a nature, and there shall be no appeal from such ruling.

§ 10

Procedure.

The Ministry, the Price Council or the Price Directorate may decide that proceedings shall take place in a meeting open to the public, when such a procedure is deemed to be in the public interest and the case is suited for such a procedure in a public session.

The King may issue further rules on the persons who, in case of doubt, are to be considered as parties to the proceedings in cases dealt with under this Act.

§ 11**

Stating Grounds for Decisions.

In cases of regulatory measures of a general nature an explan-

* Amended by the Acts of 23 March 1962 and of 19 June 1969; the amendments are incorporated in the text.

** Amended by the Act of 19 June 1969; the amendment is incorporated in the text.

ation shall, whenever possible, be given of the circumstances which have led to such measures and of the contents and purposes of the regulations issued.

§ 12*

The Price Bulletin.

The Price Directorate shall issue an official bulletin entitled the Price Bulletin ("Pristidende"), which shall contain the following:

1. This Act and later amendments and additions thereto.

2. Rules and orders made by the Storting or by the King pursu-- ant to this Act.

3. Major control and regulatory measures of a general nature and other orders of basic importance issued by the Ministry or the Price Directorate pursuant to this Act.

4. Surveys of registered restrictive business arrangements and of dominant enterprises (cf. § 35).

The bulletin may also contain a review of control and regulation activities, legal decisions involving general principles, and other reports which are considered to be of such importance that they should be made known in such a manner. The Ministry may issue rules of concerning the publication of the Price Bulletin and its contents.

The Ministry may prescribe that certain groups of persons engaged in business an business associations shall be required to subscribe to the Price Bulletin and have it exhibited at their place of business or office.

§ 13*

Publication of other Decisions made under this Act.

The authorities shall ensure that control and regulatory measures of a general nature, which are not published in the Price Bulletin, are made properly known by other means.

* Amended by the Act of 19 June 1969; the amendment is incorporated in the text.

The ministry may issue further rules with regard to the publication or other announcements of decisions made pursuant to this Act.

§ 14*

Reports to the Storting.

At the beginning of each calendar year the King shall make a report to the Storting containing the general instructions on which control and regulation activities are intended to be based in the current year.

The general instructions reported by the King, together with any amendments passed by the Storting may not be changed in any essential respect before a special report has been presented to the Storting, unless this will cause an unjustifiable delay. In that event, a report on the change made shall be submitted as soon as possible after it has been put into effect.

The King shall place special reports before the Storting on general rules issued under § 3, major amendments to such rules, rules concerning levies or the reservation of funds under § 25 (third or sixth paragraph) and particularly important rules of a general nature under § 24 og § 42 (fourth paragraph).

Section 3: Obligation to Furnish Information

§ 15

Obligation to Furnish Information.

All persons shall be obliged to furnish the King, the Ministry and the authorities mentioned in §§ 4-7, or specific representatives appointed by them, with such information as they call for to enable them to carry out their duties under this Act.

It may be stipulated that such information shall be given verbally or in writing before a date which the authorities or their representatives may determine.

The authorities mentioned above may also require that they themselves or their appointed representatives shall be allowed to examine business documents, correspondence, minutes of

* Amended by the Act of 17 June 1960; and 11 July 1986. The amendment is incorporated in the text.

proceedings and other books and papers. If necessary, the assistance of the police may be requested to have such documents, etc., surrendered. The authorities may also require that they or their appointed representatives shall be allowed to inspect plants and other real estate or movable property.

The King may authorize representatives of the bodies mentioned in § 8 to demand information, and to make examinations and inspections according to the first and second paragraphs, provided, however, that such right shall not be given to any person occupying a competitive position in relation to the party concerned.

The party from whom information is required may request that information concerning secret technical devices or processes shall only be given to the head of the Price Directorate, or to a person specially appointed by him to receive information. This rule shall also apply to examinations and inspections.

§ 16

Information Required from Authorities Bound to Secrecy.

Any information which is requested under § 15 (first paragraph) may be given by the following authorities notwithstanding the duty of secrecy which they may otherwise be required to observe:

a) Tax assessment authorities and other tax authorities.

b) Authorities entrusted with the enforcement of the provisions of this Act.

c) Authorities responsible for controlling or regulating imports and exports, emergency supply measures, or other official regulation of business activities.

The obligation to maintain secrecy is not to be regarded as a valid objection to the examination according to § 15 (second paragraph) of books and documents in the possession of such authorities.

§ 17

Repealed

Section 4: General Provisions Concerning Business Activities

§ 18

Prices and Other Terms of Business.

It is prohibited to accept, demand or agree to fix prices which are unreasonable; nor may terms of business be demanded, agreed upon, or maintained if they affect the other party unreasonably, or if they are clearly contrary to the public interest.

An enterprise shall be considered to have demanded a price or to have stipulated terms of business when such a price or terms have been stated in price lists, advertisements, or other communications to customers, or if they have been announced by price marking, price notices, or by the display of price lists at the place of business (cf. § 20).

§ 19

Estimates of Costs.

Enterprises which submit estimates of costs as a basis for a decision as to regulatory measures under this Act shall calculate such estimates in accordance with any rules which may have been issued by the authority concerned, or explain in detail any departures from these rules. If an enterprise has submitted incorrect estimates of costs, or other incorrect information of importance for a decision, this shall be reported as soon as the enterprise becomes aware of the mistake. If costs fall substantially after the submission of an estimate, this must be reported if the regulatory measures are still in force or if none have been taken on the basis of the first estimate.

§ 20

Price Marking. Bills, Invoices and Receipts.

Retailers selling to consumers shall, as far as practicable, mark the goods with the retail prices or display price lists so that prices are easily seen by the customers.

In wholesale transactions - and in other business when so required by the buyer - the seller shall give the buyer a bill, invoice or receipt.

§ 21

Unnecessary Intermediate Trade.

Intermediate trade which is unnecessary and which raises prices is prohibited; nor may sales be made to buyers who are engaged in such activities.

§ 22

Payment for Licences, etc.

No payment may, without the consent of the Price Directorate, be demanded or accepted for the transfer of a licence or other authorization, granted or expected to be granted by a public body controlling business activities. This provision shall also apply if the licence or the authorization is transferred together with a business.

§ 23

Refusal to Deal.

The Price Council may forbid enterprises to refuse to have business dealings with another enterprise or with a consumer, if the Council finds that such refusal would be detrimental to the public interest, or that it would have an unreasonable effect on the other party. It is deemed to constitute a refusal when one party is willing to have business dealings only on terms which the Council considers to be unreasonable or unusual.

The Council may, if so requested by a party intending to refuse business dealings or to urge others to do so, give an advance ruling as to whether such refusal will be forbidden or allowed. Otherwise, the Council cannot make a decision under the first paragraph before refusal is a fact, or a threat thereof or incitement thereto has been committed.

In order to ensure that the purpose of a prohibition under the first paragraph is attained, the Price Council may issue supplementary rules, which inter alia may require enterprises to have or maintain business dealings on such terms as the Council prescribes, and may prohibit incitement to and other complicity in the refusal to deal.

If a refusal of the kind mentioned in the first paragraph or a threat or an incitement thereto has caused financial damage to the other party, the latter may demand compensation. This applies irrespective of whether or not the Council has forbidden such refusal, but not if the Council has decided that such refusal shall be permitted. The provisions of § 4 of the Boycotts Act of 5 December 1947, shall also apply.

The provisions of the first, second and third paragraphs shall not apply to matters covered by the provisions of the first paragraph of § 45.

Section 5: General Power to Control and Regulate Prices, Profits and other Related Matters.

§ 24*

General Regulatory Power.

1. In futherance of the aims mentioned in § 1, letters a) and c), the King may issue:

   a) Rules concerning maximum prices, minimum prices, price freeze, price calculation, discounts, gift offers, maximum profit margins, terms of delivery and payment, and other rules with regard to prices, profits and terms of business.

   b) Rules contending against unnecessary middlemen's activities and unfair competitive conditions.

   c) Rules concerning estimates of costs, procedure regarding offers, contracts and settlement of accounts and other rules which may be needed to facilitate control.

2. In connection with rules under subparagraph 1 a) or b) of this paragraph, the King may issue:

   a) Rules requiring enterprises to fulfil certain conditions in order to be allowed to take specific prices or profits or accept definite discounts; or rules requiring such right to be conditional based on approval.

* Amended by the Act of 17 June 1960; the amendment is incorporated in the text.

b) Rules prohibiting the offering for sale or sale of goods or services when rules concerning prices of such sales have not bees issued, or when the amendment of such rules is under consideration, provided that such a prohibition is considered necessary in order to make regulation effective.

c) Rules providing that goods shall be sold in definite measures or weights and rules concerning methods of measurement and grading.

d) Rules concerning the nature and quality of pricecontrolled goods and services in so far as it is considered to be necessary in order to make regulation effective.

e) Such rules concerning the distribution of production or marketing as are considered necessary in order to prevent unfair treatment of certain consumers or districts.

3. To assist purchasers in appraising prices and qualities, the King may issue:

a) Rules obliging enterprises to mark their goods, display notices and otherwise make known their prices, terms of business, quality and other qualifications of their goods or services.

b) Rules concerning the shape of certain goods, packaging and other external features, and on the grading and measurement of goods offered for sale.

4. Rules under subsections 1, 2 or 3 may be issued as general rules or as rules of a more limited scope.

§ 25

Levies and the Setting aside of Funds
for Price Regulation Purpose.

In furtherance of the aims mentioned in § 1, letter a), enterprises may be required to pay levies for use in regulating prices and costs. Such levies may be imposed for financing measures concerning the business on which the levy is charged or financing measures covering the whole trade or industry or major groups of trades, or for general price regulation purpose.

Such requirements as mentioned in the first paragraph shall be imposed by the Storting when the levy is regarded as being of major importance to the national economy. In imposing a levy the Storting may stipulate that the King shall determine the amount of the levy and issue other rules concerning the levy.

Any levy system which is not of the kind mentioned in the second paragraph shall be imposed by the King. Levies may also be imposed by the King in other cases if the King finds it advisable not to await the decision of the Storting. In such circumstances the King may also suspend or amend levy systems which have been imposed by the Storting. The Storting may under any circumstances decide that a levy imposed by the King shall be repealed.

The levies shall be allotted to special funds with the status of independent legal entities, which money is to be kept separate from the government accounts. The King shall issue by-laws for the funds, and rules as to their purpose, administration, management of their assets, in and out of payments, enforcement of claims, accounting and auditing. If any money remains after the original purposes of the funds have been carried out, or if such action is otherwise justifiable, the King may rule that the money may be used for other price regulation purposes. It may, however, be stipulated in the by-laws that the purpose cannot be changed, or changed only with the consent of definite organizations or others representing the payers, or organizations or others representing those parties who - according to the original purpose - are intended to benefit from the funds.

If levies which have been imposed under the provisions of the preceding paragraphs are not paid in due time, interest shall be paid at the rate of one half percent per month from the date when the payment is due until payment is made.

The Storting or the King, as the case may be, may also require enterprises to set aside funds to be used for such purposes of regulation as mentioned in the first paragraph. The provisions of the first, second and third paragraphs shall apply accordingly to such requirements. The King shall make rules governing the setting aside of such funds.

§ 26

Rules as to Keeping Books of Account
and Annual Accounts.

As part of the system of control of prices and profits and other activities of enterprises, the King may issue rules concerning the keeping of books of account, annual accounts and annual reports.

The King may issue directives requiring certain groups of enterprises to publish their annual accounts.

§ 27

The Relationship between Rules
under Section 5 and under Section 4.

Rules issued pursuant to Section 5 shall override those of Section 4.

Section 6: Limitation of Dividends of Companies with Limited Liability

§ 28*

Maximum Dividends and Remuneration of Officers
of Limited Liability Companies.

Joint-stock companies may not distribute dividends or make other distributions or payments which may be placed on a par with dividends, exceeding what is justifiable in view of the provisions contained in the Act of 4 June 1976 on Stock Companies, § 12-5.

Repayment of share capital written down previously without repayment may not take place without the approval of the Price Directorate.

The remuneration of the officers of a stock company may not exceed an amount which would be reasonable regarding the work performed and the responsibility of the task.

§ 29*

Power to Impose Limitation of Dividends.

The Storting may for each individual year make a special resolution on limitation of dividend distribution and remuneration of officers of such companies as mentioned in § 28.

§ 30*

Provisions as to Control.

The King may lay down rules which are found necessary for the control of dividend distribution, including rules imposing on companies the duty to submit reports on the distribution of dividends.

* Amended by the Act of 17 June 1960 and by the Act of 4 June 1976 on Joint-Stock Companies; the amendments are incorporated in the text.

§ 31**

Effect of Company Rules.

No shareholder may make a claim against a company because dividends have been limited in violation of the rules when such limitation is a consequence of the provisions of § 28 and § 29 or of rules issued pursuant to these sections.

Additional dividends may not be distributed for previous years when limitations have been in force without the approval of the Price Directorate.

Section 7: Restraints of Competition

§ 32***

Supervision of Restrictive Business Arrangements and Dominant Enterprises.

In furtherance of the aims mentioned in § 1, letters a) and c), the Price Directorate shall supervise restrictive business arrangements and dominant enterprises. The Directorate shall, inter alia:

a) Supervise observance of the rules of this Section regarding the obligation to notify and carry out the prescribed registration.

b) Collect other information which may elucidate competitive conditions and the effects of restrictive business practices.

c) Examine such information about dominant enterprises and restrictive business arrangements obtained from reports or in other ways.

d) Implement or propose such general or special regulatory or control measures under the Act as found necessary for terminating improper conditions in business, for improving organization, or otherwise promoting development for the general benefit.

** Amended by the Act of 17 June 1960; the amendment is incorporated in the text.

*** Amended by the Act of 17 June 1960 and by the Act of 8 June 1984, no 55.

e) Assist in implementing arrangements proposed by enterprises if this is permissible under the terms of the Act and in so far as these are deemed likely to further the object contained in letter d).

Regarding the supervision of restrictive business practices and of dominant enterprises falling within the scope of The Act on Shipping Conferences of 8 June 1984, no 55 with corresponding provisions special rules apply (c.f. § 10 of The Act of 8 June 1985).

§ 33*

Obligation to notify
Restrictive Business Arrangements.

Under rules to be issued by the King, the following shall be reported to the Price Directorate:

1. Associations of enterprises which regulate or have as their purpose to regulate prices, profits, calculations of costs, terms of business, production or distribution within the realm.

2. Restrictive agreements or other arrangements made by enterprises not organized in an association with a separate governing body, if the agreement or arrangement has such purpose or such effect as mentioned in subsection 1).

3. Restrictive provisions made by enterprises that are subject to the obligation to notify under § 24, when the provisions have such purpose or such effect as mentioned is subsection 1).

The obligation to notify shall apply irrespective of whether the arrangement is implemented by means of binding or guiding provisions or by other means. Unless otherwise prescribed by the King, the obligation to report shall also apply to an association, agreement, arrangement a or provision which has come into being in pursuance of legislation.

The obligation to notify according to subsection 1) rests with the governing body of the association. If the registered office

* Amended by the Act of 19 June 1959; the amendment is incorporated in the text.

is outside the realm, the obligation to notify rests on the representative of the association and its members within the realm. The obligation to notify restrictive agreements and other arrangements mentioned in subsection 2) is the duty of any participant who is engaged in business activities within the realm as well as any representatives within the realm of participants domiciled abroad. The obligation to notify restrictive provisions mentioned in subsection 3) rests with the enterprise which has made such provisions.

The report shall contain a detailed description of the restrictive business arrangements and information on matters of importance for the supervision of such arrangements. In addition to the initial or principal report, supplementary reports shall be submitted on changes or new circumstances. The rules governing reports shall contain further provisions on the data to be furnished.

The reporting rules may contain provisions for exemptions from the obligation to notify restrictive business arrangements which are of so little significance that there is no call for supervision.

In case of doubt, the Price Directorate shall determine whether an association, agreement or other arrangement or aprovision is to be subject to the obligation to notify. The Decision of the Directorate may be appealed within three weeks to the Price Council, which has power to reverse thedecision.

§ 34*

Obligation of Dominant Enterprises** to notify.

Under rules to be issued by the King, the following enterprises shall submit a report to the Price Directorate:

1. Enterprises which may be assumed producing or distributing at at least one quarter of the total production or distribution in the realm of one or more commodities produced or distributed by the enterprise, or of services provided by it. If an enterprise has decisive influence over enterprises within Norway other than those which are operated in its own

* Amended by the Acts of 25 June 1954 and of 19 June 1969; the amendments are incorporated in the text.

** I.e. enterprises accounting for 25% or more of the total production or distribution in the Kingdom.

name, all the enterprises concerned shall be considered as one in determining the question of obligation to notify.

2. Persons who own or are responsible for the management of enterprises which are subsidiaries or subject to the decisive influence of:

a) A foreign firm which may be assumed having substantial influence on the prices in one or more countries of one or more commodities or services, or which is a participant in an association of firms which, together, may be assumed to have such influence.

b) An association of foreign firms or of Norwegian and foreign firms which may be assumed to have such influence as mentioned under letter a).

The provisions of the last sentence of subsection 1) shall likewise apply.

3. Enterprises which, although not covered by subsections 1) or 2), have received specific instructions from the Price Directorate to submit a report, because they are engaged in activities which are of such importance for one or more trades within the realm that special supervision is considered by the Directorate to be necessary.

The obligation to notify does not apply to Government monopolies.

The report shall contain a detailed account of the nature and extent of the activities in operation, of the connections existing between the firm or firms operated by a person in his own name and other forms or associations of firms as well as other matters of importance for the supervision thereof. In addition to the principal report, supplementary reports shall be submitted on any changes or new circumstances. Further details of particulars to be reported shall be given in the provisions governing reports.

The reporting provisions may contain rules on exemptions from the obligation to notify if such business activities as mentioned under subsection 1) are of so little significance that there is no call for supervision.

In case of doubt, the Price Directorate shall decide whether an enterprise has an obligation to notify under the provisions of subsections 1) and 2) of the first paragraph. If there is justifiable doubt as to there being an obligation to notify, no such obligation shall exist until the Price Directorate has made a decision.

A decision of the Price Directorate under this section may be appealed within three weeks to the Price Council, which has power to reverse the decision.

§ 35

Registration.

Reports submitted according to § 33 and § 34 shall be entered in a register kept by the Price Directorate. The register shall also include reports which have been, or will be submitted in accordance with reporting rules under the Act concerning Control of Restrictive Business Arrangements and of Unreasonable Prices, dated 12 March 1926, or the Temporary Act of 30 June 1947, concerning Price Control and Control of other Business Activities (cf. third paragraph of § 61 of this Act). The Price Directorate may also include in the register any surveys or accounts of matters which have been reported or other documents which may elucidate them. It may be requested by the person or institution furnishing the particulars that information on secret technical devices and processes shall not be registered. The King shall issue rules on registration.

If the Price Directorate obtains knowledge of circumstances which are subject to compulsory reporting, but have not been reported, a temporary registration may be made until a report has been received.

On application to the Price Directorate any person may acquaint himself with the contents of the register. Extracts may be obtained against the payment of a charge according to rates to be prescribed by the Ministry.

Under rules to be issued by the King, the Price Directorate shall publish in the Price Bulletin surveys of cases which are subject to compulsory reporting and have been registered by the Directorate.

§ 36

Prohibition against the implementation of Restrictive Business Arrangements before a Report has been submitted.

It is forbidden to implement or to participate in the implementation of restrictive business arrangements which are subject to the obligation to notify, under § 33, before they have been reported to the Price Directorate, in the prescribed manner. Until a report has been submitted, the agreements are not valid.

§ 37*

Duration of Restrictive Business Arrangements.

An agreement to participate in a restrictive business arrangement mentioned in § 33, subsections 1) and 2), may only be concluded for a maximum period of one year, or with a term of notice not exceeding three months, unless otherwise approved by the Price Council.

§ 38

Annual Accounts and Annual Reports.

Enterprises participating in an association, agreement or other arrangement which is subject to the obligation to notify under § 33, shall yearly submit to the Price Directorate their annual accounts together with a report on activities during the year, provided that:

a) The share capital of the enterprise or its net capital stock and funds according to the books at the end of the last accounting year amounted to not less than 1 million kroner, or

b) The enterprise concerned has been required by the Price Directorate to submit annual accounts and annual reports.

Enterprises obliged to submit reports under § 34 shall in any case submit accounts and reports as mentioned in the first paragraph.

* Amended by the Act of 25 June 1954; the amendment is incorporated in the text.

Accounts and reports as mentioned in the first paragraph (cf. the second paragraph), shall be submitted within four months after the expiry of the accounting year. Stock companies shall submit their accounts and reports within 14 days after these have been approved by the Annual General Meeting, but not later than 14 days after the expiry of the ime allowed under the Stock Companies Act for the adoption of the annual accounts by the General Meeting. In the case of stock companies and other companies of limited liability, accounts included in reports shall be signed by the Board, and in the case of other firms or companies, by not more than three of the responsible members, and in the case of a one-man business by the owner. If the business has an auditor, the accounts shall bear a certificate from the auditor stating that they have been audited.

The annual accounts shall be compiled in accordance with rules issued by the Price Directorate within the limits of any instructions issued under § 26. The Price Directorate may prescribe that the accounts shall be submitted on certain forms. Enterprises which are running several businesses shall submit separate accounts for each business as far as practicable.

The annual report shall contain a more detailed explanation of the accounts and a survey of activities during the year.

If an enterprise holds shares or other forms of participation in other firms, this shall be stated in the annual report or in a special appendix thereto, together with a list of the firms concerned, the capital thereof, and how many shares or other rights are held, as well as the nominal value of such shares or rights.

§ 39

Restrictions in Respect of Tenders.

Enterprises which are members of an association which regulates or controls prices or terms of tenders, shall - when submitting a tender - inform the prospective purchaser inviting tenders of the implications of such regulation or control.

The regulations of the first paragraph shall apply when restrictive business agreements or other arrangements have been made, or when provisions have been made thereunder, regarding the regulation or control of tendered prices or terms.

§ 40

Coercive Measures Applied to Members.

If a restrictive association has imposed a fine or other penalty on a member, or demanded compensation for the violation of a restrictive provision, the Price Council may - on receiving a complaint or on its own initiative - reduce or cancel the penalty or compensation, if it is considered by the Council that it would be contrary to the public interest to enforce the provision by coercive means, or that the consequences of the penalty or compensation would be unreasonable for the member concerned.

The provision of the first paragraph shall apply to penalties or compensation for the violation of restrictive agreements or other arrangements and of restrictive regulations made under such agreements or arrangements, or imposed by dominant enterprises which are subject to the obligation to notify under § 34.

§ 41

Exclusion of Members and Refusal to Admit Members.

If a restrictive association has excluded or refused to admit an enterprise as a member, the Price Council may - on receiving a complaint or on its own initiative - reverse the exclusion or direct the association to admit the enterprise concerned as a member, provided that the Council is of the opinion that the exclusion or refusal is unfair to the enterprise concerned, or that is contrary to the public interest.

The provisions of the first paragraph shall apply with regard to participation in restrictive agreements and other arrangements.

§ 42*

Amendment, Annulment and Prohibition
of Restrictive Business Practices.

The King may amend or annul any regulation which has been made by a restrictive association if it is deemed likely to have a harmful effect on production, distribution or other business activi-

* Amended by the Act of 17 June 1960;
the amendment is incorporated in the text.

ties within the realm, or the regulation is otherwise considered unreasonable or detrimental to the public interest. Such prohibitions or stipulations deemed necessary to ensure that the purpose of the annulment or amendment is achieved may be issued in connection with the decision.

If the measures taken under the preceding paragraph do not achieve their purpose, or are not considered to be sufficient, the King may dissolve the association. Prior to such dissolution an opinion shall be obtained from the Price Council. In connection with the dissolution of an association, the King may also order the dissolution of a company considered to be part of the association or through which the latter operates. The King shall issue rules governing the implementation of the dissolution of the association and/or the company. The King may also issue such prohibitions and stipulations deemed necessary to ensure that the purpose of the dissolution is achieved.

The provisions of the first paragraph shall apply to restrictive business agreements and other arrangements, and to restrictive regulations made under such agreements or arrangements or imposed by dominant enterprises which are subject to the obligation to notify under § 24.

The King may forbid particular associations or groups of enterprises, particular dominant enterprises subject to the duty to notify or enterprises in particular trades to implement restrictive regulations, agreements or arrangements when such restraints of competition may be assumed to have such effects as mentioned in the first paragraph or when prohibition is found necessary to further such competition as is desirable from the public point of view. Under similar conditions the King may lay down a general prohibition of particular types of restrictive business practices. Under such conditions as mentioned in the first and second sentence the King may also lay down other rules against restraints of competition or particular types of restrictive business practices.

§ 42 a

Takeover of Enterprises.

These provisions apply to takeover of enterprises. The term takeover also includes mergers, purchase of stocks and shares or parts of an enterprise.

If the Price Council finds that such takeover will lead to or reinforce a major restraint on competition, and that this will be harmful to the public interest, it may:

1. Forbid the takeover and issue any provisions deemed necessary to achieve the object of forbidding the takeover

2. impose an obligation to sell shares in or parts of the enterprise which have been purchased in order to gain ownership of the enterprise

3. issue other provisions to counteract restraints of competition harmful to the public interest due to the takeover.

The Price Council may as a rule only intervene in accordance with the previous section after the parties to the takeover have been given the opportunity to accept a voluntary solution.

The King issues provisions concerning the deadline for issuing a decision under this section. The King may also issue provisions concerning the enforcement of this statute and rules of procedure as well as provisions concerning notification of takeovers in certain trades or by certain enterprises to the Price Directorate.

§ 43

Restrictive Business Arrangements applicable abroad.

The provisions of §§ 32, 33, 35, 36, 37, 40 and 41 shall not apply to:

a) Restrictive business associations which have their registered office within the realm, but which have only made, and whose only purpose is to make, restrictive business regulations applicable in other countries, or to trade and commerce between other countries.

b) Restrictive business agreements, arrangements or regulations made by enterprises within the realm, when such agreements, arrangements and regulations are of the nature mentioned under letter a).

c) The participation of Norwegian enterprises in foreign restrictive business associations, agreements or other arrangements of the nature mentioned under letter a).

The Price Directorate shall supervise such restrictive business arrangements as mentioned in letters a) and b), with a view to taking action regarding matters which may have detrimental effects on Norwegian interests, or which may be assumed to be contrary to obligations undertaken by Norway in an international agreement. Similar supervisions shall be exercised in respect of the participation of Norwegian enterprises in such restrictive business arrangements as mentioned in letter c). The King may issue rules concerning the obligation to notify as a basis for supervision.

§ 44

Foreign Restrictive Business Practices.

If the Price Directorate obtains knowledge that measures detrimental to Norwegian interest are being put into effect through foreign restrictive business practices, the matter shall be reported to the Ministry.

Section 8: Obstruction of Regulations. Forced Sales. Valuation Fees. Distraint.

§ 45

Obstruction of Regulations.

Unless 14 days have passed since notification to the Ministry, no organization of enterprises may put into effect a stoppage, reduction or realignment of economic activities which is likely to obstruct the purpose of regulations made under this Act where

such activities are of essential importance to the supply situation in the realm or a major part thereof. In cases of doubt, the King shall give a binding ruling, whether a stoppage, reduction or realignemnt comes within the provisions of this paragraph.

When advance notice has been given according to the first paragraph, the Storting - or the King, if the Storting is not in session - may determine that the time allowed according to the first paragraph shall be extended up to one month. Such a decision shall be made before the expiry of the time limit stated in the first paragraph.

In the event of a dispute between the authority concerned and an organization of enterprises with regard to the lawfulness or interpretation of a rule, action may not be taken to settle the dispute by means of stoppage, reduction, or realignment of economic activities; nor may any such action be taken in a dispute concerning the validity or interpretation or an agreement on which rules are based.

It is unlawful to incite any person to initiate or continue such action as mentioned in the third paragraph. It is also unlawful to incite a person to initiate or continue such action as mentioned in the first paragraph before the expiry of the time limit mentioned in the first and second paragraphs.

The King may prohibit the stoppage, reduction, or realignment of economic activities likely to run counter to regulation under this Act. Such prohibition shall not apply to circumstances covered by the provisions of the first paragraph.

§ 46*

Prices in Cases of Forced Sale, Expropriation, and Repurchase according to Allodial Rights.

Unless regulations to the contrary have been made under this Act, prices higher than those permissible in voluntary sales may not be accepted in a forced sale. An auction bid may be confirmed notwithstanding the provisions regarding time limits in the Act of 13 August 1915, § 148, concerning forced sales, when the Court has found it necessary to postpone the decision on confirmation owing to the determination of the price.

* Amended by the Act of 6 April 1984, no 17.

In cases of expropriation and repurchase according to allodial rights the price shall be determined on the basis of current price regulations. Provisions of valuations in The Act of Compulsory Purchases Compensation and in The Act on Allodial Privileges, shall have priority.

§ 47

Payment of Fees for Valuations and Surveys.

The ministry may rule that fees shall be paid at specified rates for valuations or surveys made pursuant to this Act at the request of any interested party.

§ 48

Distraining.

Unpaid amounts for the expenses of an association or a committee under § 8, subscription fees for the Price Bulletin under § 12, a price regulation levy under § 25, and fees for valuation and surveys under § 47, plus interest and costs, may be recovered by means of distraint.

Section 9: Review of decisions

§ 49

The right of a Superior Authority
to Review Decisions on its own initiative.

The King or the Ministry may, on its own initiative, amend or cancel a decision made by the bodies mentioned in §§ 4-8, or instruct the bodies concerned to do so.

The Price Directorate has a similar right regarding decisions made by the bodies mentioned in § 6 and § 7, or those mentioned in § 8, when the latter are under the jurisdiction of the Directorate. This provision also applies to the Regional Offices of the Price Inspectorate in respect of decisions made by the Price Committees or by bodies mentioned in § 8 when the latter are under the jurisdiction of the Regional Office.

The King may issue rules on the examination of decisions by superior bodies.

§ 50*

Review of Decisions.

There is no right of appeal against decisions of the Price Council taken under §§ 10, 17, 23, 33, 34, 37, 40 and 41: nor against decisions in other matters in which the authority to make decisions has been vested in the Council under the second sentence of the fourth paragraph of § 4, unless otherwise provided in rules issued by the King.

§ 51

(Repealed by the Act of 19 June 1969)

Section 10: Penalties and Forfeiture

§ 52

Penalties imposed upon Individuals.

Any person who wilfully violates any provisions of this Act or of rules made pursuant thereto, or which are maintained in force thereunder, and which are not concerned with the organization and functions of the regulating or controlling authorities, shall be liable to a fine or to imprisonment maximum one year, or both. The same penalty shall apply to any person who wilfully aids or abets in such violation. Any person who has purchased goods, or a right, or has received a service at an unlawful price, shall only be liable to penalty as accessory if he has encouraged or incited the violation.

In particularly serious circumstances, the offender may be sentenced to imprisonment maximum three years, to which penalty may be added a fine. In determining whether such circumstances exist, particular consideration shall be given to whether the violation is extensive in nature and of considerable duration, whether it has been committed or continued despite of a warning by a public authority, whether incorrect accounts or other records have been kept, whether an attempt has been made to conceal the offence by, inter alia, neglecting to keep accounts, giving false information, whether a wrongfully procured or fictitious trade mark,

* Amended by the Acts of 28 March 1958; of 23 March 1962 and of 19 June 1969; the amendments are incorporated in the text.

certificate, or similar document has been used, and whether the offender has previously been punished for violation of legislation concerning prices, trust control, suppliers, or rationing.

Any person who through negligence violates any provisions or regulations mentioned in the first paragraph, or who aids or abets in such violation, shall be liable to a fine.

It may be stipulated in rules issued under this Act that a violation thereof shall not entail a penalty.

§ 53

Penalties Imposed upon Corporate Bodies.

If a punishable offence mentioned in § 52 has been committed by any person who has acted on behalf of a corporate body, a foundation or an association, the corporate body, foundation or association may be sentenced to a fine and deprivation of the right to carry on business, provided, however, that this shall only be done when the violation has been committed in furtherance or the interests of the corporate body, foundation or association, or it may be assumed to have derived substantial advantage from the violation.

§ 54

Repealed

§ 55

Application of the Provisions of
the Penal Code in Respect of Public Service.

Participation in duties or regulation or control under this Act shall be regarded as public service for the purposes of the provisions of the General Penal Code of 22 May 1902. Chapters 11, 12, 33 and 34.

§ 56

Forfeiture of Unlawful Excess Prices etc.

If any person has charged a higher price than lawful under provisions contained in, or rules issued under or continued by this Act, an amount which the Court considers to be equivalent to the

excess price shall be forfeited. This provision shall apply irrespective of whether or not the circumstances entail criminal liability.

The excess price shall be forfeited either by the person who has taken the unlawful price, or by the person or institution on whose behalf or for whose benefit he acted, or by both these parties. If the amount is confiscated from both parties, the Court may either divide the responsibility between them, or it can hold them both jointly and separately responsible for the whole amount or part thereof. The provisions of this paragraph shall apply when more than one person is implicated in the circumstances giving rise to the forfeiture.

No deduction may be made from the forfeited amount for the unlawful excess price paid by the responsible party for goods for sale, raw materials or means of production, or for services received, unless:

1) The part of the excess price concerned has been confiscated from the supplier, or

2) The offender can prove that he was not aware that the prices paid by him, or accepted by him, were excessive, and further that he has exercised such care as might be expected under the circumstances.

A deduction shall be made in respect of amounts which the responsible party is ordered, by decision of the Court or by order of the magistrate, to repay the aggrieved party. This shall also be done if the responsible party has made such repayment in advance and he either proves that he was obliged to do so under the provisions of § 59, or proves that repayment took place before the matter was raised by the police or the controlling authority concerned.

If the entire amount has been declared to the tax authorities, a deduction shall be made corresponding the increase in public taxes and duties which the excess price has imposed on the responsible party. The Public Prosecutor shall notify the tax authorities concerned of any deduction which has been made in accordance with the provisions of this paragraph.

Proceedings for forfeiture under this section may not be instituted when five years have elapsed since the excess price was received, unless a criminal offence has been committed.

The provisions of this section shall apply when, in violation of

provisions contained in, or rules issued under this Act, or maintained in force by this Act,

1) a lower price than the minimum price has been paid, or

2) attained compensation for the transfer of licences or other authorizations, which have been given or are expected, or

3) company dividends received have been excessive.

§ 57

Forfeiture of Excess Profits
due to incorrect Estimate of costs.

Any excess profit obtained because the authorities have regulated the price at a higher level than they would otherwise have done, or if they have refrained from implementing regulations, may be forfeited by the party which has contributed to this condition by:

1) Submitting estimates of costs or other information which - in the light of conditions prevailing when the information was given - contain substantial errors, or

2) Failing to submit obligatory reports stating that the costs have become substantially lower than stated in estimates previously submitted.

Such excess profits may also be forfeited by the party on whose behalf the offence has been committed. Such forfeiture may take place irrespective of whether or not any criminal liability has been incurred by anyone. The provisions of the second, fifth and sixth paragraphs of § 56 shall apply.

§ 58

Application of the Provisions concerning Penalties and Forfeiture to Violations of Previous Enactments.

The provisions for the imposition of penalties in this Act shall also apply in respect of violations of provisions contained in or issued pursuant to the Rules on price control of 12 September 1940, the Provisional Order of 8 May 1945 concerning the control of prices and other business activities, or the Provisional Act of 14 December 1946 and 30 June 1947 concerning the control of prices and other business activities, provided, however, that no person may be sentenced to a more severe penalty than might have

been imposed according to the penal provisions in force at the time when the offence was committed.

The provisions of § 56 shall also apply to offences committed before the entry into force of this Act, provided, however, that the amount forfeited may not exceed the maximum amount which might have been forfeited under the provisions in force at the time of the offence.

Proceedings which have been instituted before the entry into force of this Act for the payment of money to a price adjustment fund in accordance with § 15 of the provisional Act of 30 June 1947 concerning the Control of Prices and other Business Activities, shall be decided under the provisions of the said Act. In proceedings which are instituted after the entry into force of this Act in respect of cases prior thereto, forfeiture according to § 57 may be ordered in so far as payment could have been required under § 15 of the Act of 30 June 1947.

§ 59

Repayment of Unlawful Excess Price.

Anyone who has paid a higher price than what is lawful may demand repayment of the excess price unless, having regard to the circumstances of the case, he is considered to be responsible to a considerable extent for the violation.

A demand for reduction of the agreed price to the lawful price or for repayment of the excess price shall not entitle the other party to annul the agreement,

1) if the transaction is a part of the regular commercial sale of goods or services to consumers,

2) if the annulment would have unreasonable effects having regard to the degree of guilt of both parties and to the other circumstances of the case.

Section 11: Definitions. Entry into force. Territorial Application.

§ 60

Definitions.

1. "Price" means compensation of any kind irrespective of whether any other term is used, such as remuneration fee, honorarium,

freight, rate, rent, etc.

2. "Goods" means movable or immovable property, including ships, aircraft and electric power.

3. "Services" means all kinds of services for which compensation is received, except work in the employment of others.

4. "Business Activities" means all kinds of permanent or occasional economic activities for gain.

5. "Enterprise" means any party - whether an individual, a corporate body, a foundation or an association which carries on business activities.

6. "Joint-stock company" includes limited partnerships and joint-stock shipping companies.

§ 61

Entry into Force.

This Act shall enter into force on 1 January 1954. Rules may nevertheless be issued pursuant to this Act at an earlier date, provided such rules do not enter into force before the Act itself, except in so far as they are concerned with the organization of the bodies, for exercising control and regulation.

As from the entry into force of this Act, the Act to provide for the Control of Restrictive Business Arrangements and of Unreasonable Prices dated 12 March 1926, is repealed. The Provisional Act of June 1947 concerning the Control of Prices and other Business Activities shall continue to apply until this Act enters into force.

Rules issued or continued pursuant to the above mentioned Acts of 12 March 1926 and 30 June 1947 shall - in so far as they are in force on 1 January 1954 - continue to have effect until amended or repealed pursuant to this Act or by special rules issued by the King. Until such time as the Storting has made a decision under § 28 of this Act, the provisions concerning the limitation of dividends under the Provisional Act of 30 June 1947, shall continue to have effect.

The King shall determine whether and to what extent the provisions of this Act and rules made hereunder shall apply to Svalbard (Spitsbergen).

2. PROVISIONS CONCERNING RESALE PRICE MAINTENANCE

Royal Decree of 18 October 1957*

In pursuance of § 24 of the Act of 26 June 1953 on Control of Prices, Profits and Restraints of Competition, the following provisions concerning resale price maintenance are hereby laid down:

§ 1

Definition of Resale Price Maintenance.

The term "resale price maintenance" in these provisions means the action of a supplier or of an association or group of suppliers, or several such associations or groups in concert, of issuing guiding or binding resale prices or guiding or binding directives to dealers on the determination of their prices or profits. Resale price maintenance as defined herein is considered to exist, whether or not a supplier has made specific mention of the prices and profits to be taken, or which ought to be taken on resale, if the supplier has made out invoices on the basis of gross prices which are stipulated in such a manner that dealers would normally use them as resale prices.

The term "supplier" in these provisions means a person or persons engaged in the business of making sales to dealers. An association of such suppliers is referred to as a suppliers' association. A group which is formed by agreement between such suppliers, without the organization of a separate governing body is known as a suppliers' group. The term "dealers" in these provisions means persons engaged in the business of reselling, wholesale or retail.

Resale price maintenance by one single supplier is designated as individual resale price maintenance. Resale price maintenance by a suppliers' association or group, or by several suppliers' associations or groups in concert, at the same or at different stages of production or distribution, is designated as collective resale price maintenance.

* Amended by Royal Decree of 17 November 1967, the amendment is incorporated in the text.

§ 2

Provisions governing Individual Resale Price Maintenance.

Unless exemption has been granted under § 9, a supplier may not practice such resale price maintenance as mentioned in § 1.

The provisions of the preceding paragraph shall not, however, prevent one supplier from issuing recommended resale prices to dealers. The supplier must, in all notifications where such recommended prices are given, specifically state that these are of a guiding nature only.

The Price Directorate is empowered to prohibit such advisory activity as mentioned in the second paragraph, if the Directorate finds the requirement that prices are to be described as of a guiding nature has not been observed, or that pressure has been exerted contrary to the provisions of § 5 and § 6 that the activity is likely to result in excessive prices or profits, will in other ways inhibit effective price competition or can lead to unfair competition.

§ 3

Provisions governing Collective Resale Price Maintenance.

Unless exemption has been granted under § 9, suppliers' associations or groups may not practise such resale price maintenance as is mentioned in § 1. This applies irrespective of the nature of the price maintenance involved, whether it is guiding or binding.

§ 4

Provisions governing Foreign Resale Price Maintenance.

Unless exemption has been granted under § 9, resale price maintenance by a foreign supplier may not be practised within the realm.

The provisions of the first paragraph shall not, however, prevent a foreign supplier or his representative in the realm from issuing recommended prices to dealers. The supplier or his representative must, in all notifications where such prices to dealers are given, specifically state that these are of a guiding nature only.

The Price Directorate is empowered to prohibit such advisory activity as mentioned in the second paragraph, if the Directorate finds that the requirement that prices are to be specifically described as of a guiding nature has not been observed, or that pressure has been exerted contrary to the provisions of § 5 and § 6 or that the activity is likely to result in excessive prices or profits or will in other ways inhibit effective price competition or can lead to unfair competition.

Resale price maintenance by foreign suppliers' associations or groups may not be practised in the realm unless an exemption has been granted under § 9.

If foreign suppliers, suppliers' associations or groups have practised resale price maintenance which according to the provisions in the preceding paragraphs, cf. § 9, may not be practised in the realm, the representative of the supplier, or of the suppliers' association or group, must inform the Norwegian dealers in writing that they are not committed by the maintenance arrangements and that they are free to take lower prices or profits than those fixed by the foreign supplier, suppliers' association or group. The representative shall send such notice to all his clients. Similar notices shall be given by the importers to the dealers to whom they are selling the goods.

§ 5

Prohibition against influencing Dealers with regard to Prices or Profits.

Suppliers, suppliers' associations or groups or their representatives, may not, by refusal to deal or by the use of other methods of compulsion or by threats of using such measures or through appeals or in any other way, endeavour to induce dealers to calculate higher prices or profits or to give other rebates or other services than they themselves find it necessary to give. Nor may suppliers, suppliers' associations, groups or representatives attempt to prevent dealers from announcing their prices, rebates or other services in advertisements, brochures or in any other way.

Nor may such inducements as mentioned in the first paragraph be practised by anyone who is in the service of, or who acts on behalf of a supplier, suppliers' association or group.

§ 6

Prohibition against inducing Suppliers to practise Resale Price Maintenance or to increase Resale Prices.

Associations or groups of dealers may not by using threats or by the actual use of methods of compulsion or by appeals or in any other way attempt to induce suppliers to practise resale price maintenance or to fix higher recommended prices than those they themselves find it necessary to give.

Such inducements as mentioned in the first paragraph must neither be practised by anyone who is in the service of, nor by anyone who acts on behalf of an association or group of dealers.

§ 7

Terms of Business which form Part of the Regulation of Dealers' Prices and Profits.

The regulations in these provisions prohibiting regulation of prices and profits by suppliers towards dealers are also applicable to guiding or binding regulation by suppliers, suppliers' associations and groups of dealers' terms of business, in so far as such terms must be regarded as forming part of the regulation of prices and profits by suppliers towards dealers. This also applies to the regulations of § 5 and 6.

§ 8

Special Rules for Resale Price Maintenance effected in pursuance of an Act or a Resolution of the Storting.

As regards resale price maintenance effected in pursuance of an Act or a resolution of the Storting, the regulations of §§ 1-7 apply, within the limitations arising from the Act, the resolution or from rules issued in pursuance of the Act or the resolution.

§ 9

Exemption.

The Price Directorate is empowered to grant exemptions from the provisions of §§ 1-7, when such an exemption is deemed advisable

on account of special circumstances and is consistent with the public interest.

The Price Directorate can determine such conditions and issue such rules as are considered necessary to prevent an exemption from resulting in prices or profits that are too high or improper distribution or competitive conditions, or from otherwise having effects which are considered to be contrary to the public interest.

The Price Directorate is further empowered to repeal at any time an exemption which has been granted, if the conditions laid down or the rules issued are not observed or it is considered that the exemption results in such harmful effects as mentioned.

§ 10*

The competence of the Ministry and the Price Directorate.

The rules contained in these provisions entail no limitation in the authority vested in the Ministry and the Price Directorate to make decisions under § 24 and § 42 of the Price Act (cf. also § 9, paragraph 5, of the Price Act).

§ 11

Entry into force.

These provisions shall enter into force on 1 May 1958. Nevertheless, the Price Directorate is empowered immediately to make decisions under these provisions to the extent that such decisions are considered to be necessary or expedient for preparing the implementation of these provisions.

* Amended by Royal Decree of 20 March 1987, the amendment is incorporated in the text.

3. PROVISIONS CONCERNING HORIZONTAL PRICE COOPERATION

Royal Decree of 1 July 1960*

In pursuance of § 24 and § 42 of the Act of 26 June 1953 on Control of Prices, Profits and Restraints of Competition, the following provisions concerning the regulation of prices and profits, etc., are laid down:

§ 1

Prohibition of Regulation of Prices, Profits, "Gift Offers" and Rebates.

Associations or groups of enterprises may not establish or maintain such regulation of the sale of goods or of the rendering of services which entails:

a) The fixing of prices or profits or the issuing of directions as to how the enterprises themselves may determine their prices and profits.

b) The establishment of "gift offers" or rebates apart from ordinary cash discounts.

c) The reporting by enterprises to an organization of their prices, profits, "gift offers" or such rebates as are covered by letter b).

d) Other forms of restrictive business arrangements with regard to prices, profits, "gift offers" or such rebates as are covered by letter b).

The rules contained in the first paragraph apply regardless of the manner in which the restrictive business arrangements come into being, whether through written or oral rules, agreements, decisions or arrangements, or whether they are implemented in any other way. The rules also apply to guiding regulation.

Associations or groups of enterprises may not in their constitutions or by-laws or in other decisions establish or maintain rules which reflect the aim to put into effect such restrictive

* Amended by Royal Decree of 17 October 1975, 4 February 1977, 2 September 1983 and 11 November 1983. The amendments are incorporated in the text.

business arrangements as are prohibited under the rules of the first paragraph (see second paragraph), or establish or maintain other rules involving such business arrangements.

The rules contained in the first, second and third paragraphs apply regardless of whether the enterprises themselves are members of the association or group, if the association or group is established or the restrictive business arrangement is put into effect by persons acting on behalf of the enterprises.

§ 2

Prohibition of Restrictive Business Arrangements in respect of Tenders.

Associations and groups of enterprises may not establish or maintain restrictive business arrangements with regard to prices or terms for tenders concerning the sale of goods or the rendering of services. Nor may such associations or groups establish or maintain rules stating that particular enterprises may not submit tenders, or rules allocating tenders between particular enterprises, or establish or maintain other forms of restrictive business arrangements with regard to tenders.

The rules contained in § 1, second, third and fourth paragraphs, also apply to restrictive business arrangements in respect of tenders.

§ 3

Prohibition against Exercising Influence on Enterprises with regard to Prices, Profits, "Gift Offers" or Rebates.

Associations or groups of enterprises may not, by refusal of membership, imposition of fines or the application of other coercive measures or by threats to make use of such measures or by recommendations or in any other way, try to influence their members, or other enterprises, to charge higher prices or profits or grant other gifts or rebates than the enterprises themselves find reason to.

Nor may associations or groups of enterprises in such a way as mentioned in the first paragraph try to influence their members or other enterprises with the aim of restricting competition with regard to tenders (cf. § 2).

Nor may such influence as mentioned in the first and second para-

graphs be exercised by the members of an association or a group or by any person who is employed by the association or group or who otherwise is acting on behalf of the association or group.

§ 4

Provisions governing Foreign Restrictive Business Arrangements.

Enterprises in this country may not take part in restrictive business arrangements of the kind described in § 1 and § 2 which are effected by a foreign association or group regarding the sale or delivery of goods or the rendering of services within this country.

Representatives in this country of such associations or groups mentioned in the preceding paragraph or of enterprises which are members of such an association or group, may not try to influence Norwegian enterprises, which have a corresponding business to the members of the foreign association or group, to charge higher prices or profits or grant other "gift offers" or rebates than the enterprises themselves find reason to do for the sale or delivery of commodities or the rendering of services in this country. Nor may such representantives try to influence Norwegian enterprises with a view to restricting competition in respect of tenders.

The term "influence" in these provisions means actions as described in § 3, first paragraph.

§ 5*

General Exceptions
to the Provisions contained in §§ 1-4.

The provisions contained in §§ 1-4 shall not apply to:

a) Exports,

b) sale or delivery of products of Norwegian agriculture, forestry or fisheries by producers or producers' organizations in agriculture, forestry or fisheries,

* Amended by Royal Decree of 27 February 1987.

c) sale or delivery by a joint sales organization established by an association or group of enterprises, or the settling of accounts between such an organization and its members,

d) newspapers,

e) agreements regarding jointly supplied services for

- tendering for building and construction work and for such other activities as determined by the Ministry of Consumer Affairs and Government Administration,
- the lending of money,
- the underwriting of bond emissions and share issues,
- jointly supplied co-insurance in life insurance on the expressed wish of the policy holder.

The exemptions only apply to agreements to cooperate on a particular project and not to an overall organized cooperation on the supply of such services.

When a tender is submitted based on a joint agreement to supply services, the prospective purchaser inviting tenders must be given precise information on the details of the agreement (cf. § 39).

The Ministry of Consumer Affairs and Government Administration may lay down rules to delimit the exceptions under letter b) and letter e) above.

The exception stated under letter c) shall only apply to organizations found by the Ministry of Consumer Affairs and Government Administration to be bona fide sales organizations for the enterprises concerned. The Ministry may withdraw the approval if the conditions for such an approval have not existed or are no longer met.

§ 6

Authority to grant Exemptions
from the Provisions contained in §§ 1-4.

The Ministry of Consumer Affairs and Government Administration may grant exemptions from the provisions contained in §§ 1-4:

a) If the restrictive business arrangement is considered neces-

sary for extensive technical or commercial co- operation between enterprises and this cooperation is considered to lead to lowering of costs, the improvement of products or promotion of rationalization desired from the public point of view,

b) if the restrictive business arrangement is considered necessary to protect the economic activity in a sector against methods of competition that are unfair or detrimental to the public interest,

c) if the restrictive business arrangement is otherwise called for on account of specific circumstances, and is considered to be compatible with the public interest.

Generally, exemptions shall be granted only for a limited period of time.

The Ministry may stipulate such conditions or issue such rules that are considered necessary to prevent an exemption from leading to prices or profits that are too high or entailing other conditions which are considered unreasonable or against the public interest.

The Ministry may withdraw a grant of exemption if the exemption is no longer considered necessary or if the conditions stipulated or rules issued are disobeyed or the actions taken under the exemption turn out to have entailed such conditions as mentioned in the preceding paragraph.

§ 7*

Definitions.

The term "group of enterprises" in these provisions means a group established by two or more enterprises through agreements or arrangements without the appointment of an executive committee.

The term "ordinary cash discount" means such discount as is normally granted in the trade concerned for cash payment or payment within 30 days. A rate exceeding 3 percent shall under no circumstances be considered an ordinary cash discount.

* Amended by Royal Decree of 27 February 1987. The amendments have been incorporated.

The Provisions also apply to restrictive agreements concerning interest on bank deposits as well as attempts to influence the setting of such rates.

§ 8

The Relation to the Provisions on Resale Price Maintenance.

The rules contained in these provisions shall not apply to cases covered by the provisions on resale price maintenance laid down by Royal Decree of 18 October 1957.

§ 9

Provisions concerning Implementation.

The Ministry of Consumer Affairs and Government Administration is empowered to issue such rules regarded as necessary or expedient for the implementation of the provisions of §§ 1-6 (cf. also § 7 and § 8) including rules designed to put an effective stop to existing restrictive business arrangements which are contrary to these provisions.

The Ministry may wholly or partly delegate its authority under § 5 and § 6 (cf. also § 11) to the Price Directorate.

§ 10*

The competence of the Ministry and the Price Directorate.

The rules contained in these provisions entail no limitation in the authority vested in the Ministry and the Price Directorate to make decisions under § 24 and § 42 of the Price Act (cf. also § 9, paragraph 5, of the Price Act).

§ 11

Entry into Force.

These provisions shall enter into force on 1 January 1961, the rules in § 2 (cf. §§ 3-10) however, on 1 September 1960. The Ministry is empowered to make decisions immediately under these provisions to the extent that such decisions are considered to be necessary or expedient so as to prepare the implementation of these provisions.

* Amended by Royal Decree of 20 March 1987, the amendment is incorporated in the text.

4. PROVISIONS CONCERNING THE EXECUTIVE PROCEDURE CONCERNING TAKEOVER OF ENTERPRISES IN PURSUANCE OF § 42 A OF THE PRICE ACT

Royal Decree of 8 July 1988

In pursuance of § 42 a cf § 9 of the Act of 26 June 1953 no. 4 on Control of Prices, Profits and Restraints of Competition, provisions concerning procedure with regard to takeovers of enterprises in pursuance of § 42 a of the Price Act are hereby laid down:

§ 1

Rules of procedure for the Price Directorate

If the Price Directorate finds that there might be a reason for intervening against a takeover according to § 42 a of the Price Act, the Directorate shall seek to obtain a solution by getting the parties to alter the agreement voluntarily or if necessary annull the takeover.

The Price Directorate may also consider a takeover according to § 42 a of the Price Act at the request of the Price Council or in other occations than expressed in the first subsection .

§ 2

Rules of procedure for the Price Council

If the Price Directorate does not obtain such voluntary arrangement as mentioned in §, 1 first subsection, the Directorate shall give a recommendation to the Price Council to intervene against the takeover according to § 42 a of the Price Act. The parties and the Price Council shall receive a copy of the recommendation at the same time.

The Price Council discusses the case in a meeting to which the parties are summoned and given the right to express their views.

After the parties and any other persons who have been summoned have left the meeting, and after a final recommendation from the Price Directorate the Price Council gives its decision.

§ 3

Deadline for intervention by the Price Council

The Price Council may intervene against a takeover according to § 42 a of the Price Act within 3 months after the Price Directorate has taken the case to the Council.

After the expiration of this period, the Price Council may still intervene against the takeover if the parties have given false information or an essential change in the situation has occurred.

§ 4

Extension of the deadline

The Chairman of the Price Council may extend the deadline laid down in § 3, first subsection, by 3 months if the parties have delayed the executive procedure or if special conditions exist.

The deadline according to § 3 first subsection shall not apply if the parties agree on an extension of the deadline.

§ 5

Final deadline for intervention

A takeover according to § 42 a) of the Price Act cannot be reacted against when 1 year has passed since the final agreement on the takeover was made. Where special reasons apply, the Price Council may extend this by a period not exceeding 1 year.

§ 6

Mandatory Notification

The Price Directorate may issue provisions making notification of takeovers mandatory in spesific trades or for spesific enterprises.

§ 7

Enforcement and supplementing

The Ministry of Consumer Affairs and Covernment Administration may issue further stipulations concerning the enforcement and supplementing of the provisions.

§ 8
Entry into force

These provisions enters into force on 1 November 1988.

III. EXPLANATORY NOTES ON THE LEGISLATION

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1. ACT ON CONTROL OF PRICES, PROFITS AND RESTRAINTS OF COMPETITION OF 26 JUNE 1953 (THE PRICE LAW)

a. Changes in the Price Law since 1953.

As mentioned in I, Introduction, the Act of 26 June 1953 has been amended several times. Most of these amendments have been of minor importance. The amendments made by the Acts. Nos. 6 and 7 of 17 June 1960 are however of great significance.

The Act No. 6 of 17 June 1960 amendments were made to §§ 14, 24, 32 and 42. The amendments were aimed at clarifying and expanding the power of the authorities to introduce prohibitions or other regulations of general application.

§ 24 of the Act had been interpreted so as to authorize particular as well as general measures. By the amending Act, the competence of the authorities is clearly defined by the addition of a new fourth paragraph to the § 24 with the following wording:

> "Rules under sub-paragraphs 1, 2 and 3 may be issued as general rules or as rules of more limited scope."

Of greater importance was the amendment to § 42, fourth paragraph. Originally this paragraph had the following wording:

> "The King may forbid enterprises and associations to put into effect any restrictive rules, agreements or other arrangements which may be assumed as having the effects mentioned in the first paragraph."

It could give rise to doubt whether these provisions conferred upon the authorities the power to introduce prohibition of general application. According to the amending Act the paragraph now reads:

> "The King may forbid particular associations or groups of enterprises, particular dominant enterprises subject to the duty to notify or enterprises in particular trades to implement restrictive provisions, agreements or arrangements when such restraints of competition may be assumed as having such effects as mentioned in thefirst paragraph or when prohibition is found necessary to further such competition as is desirable from the public point of view. Under similar conditions the King may lay down a general prohibition of particular types of restrictive business practices. Under such conditions as mentioned in the first and second sentences, the King may also lay down other rules against restraints of competition or particular types of restrictive business practices."

These provisions clearly state that the authorities are empowered to lay down general prohibitions of certain kinds of restrictive business practice if the practice must be considered to have such detrimental effects as are mentioned in the first paragraph of § 42 or if the prohibition is considered necessary to promote such competition as is desirable from the public point of view.

The amendments to §§ 14 and 32 were necessary as a consequence of the amendments to §§ 24 and 42.

By Act No. 7 of 17 June 1960 amendments were made to § 9 and §§ 28-31 with a view to abolishing the control of dividends. The main provisions concerning this control were contained in the previous § 28, which contained the following wording:

> "Unless permission has been obtained as provided for in the third paragraph, a joint-stock company may not distribute a higher annual dividend than that corresponding to such percentage of the share capital at the beginning of the accounting period as shall be resolved by the Storting for each year. Varying rates of dividends may be stipulated in the resolution of the Storting for various groups of shareholders, and exemptions may be made for small companies.
>
> No dividends may be paid for an accounting year before the previous accounting year has expired, unless the approval of the Price Directorate has been given. According to general instructions to be laid down by the King, the Price Directorate may agree to the payment by a joint-stock company of a higher dividend than that stipulated in the first paragraph. The King may give an advance commitment regarding distribution of higher dividends in the interests of the furtherance of desirable rationalization, establishment of new companies or expansions; provided, however, that such a prior commitment is not given for more than ten years.

In preparing the drafts of resolutions as mentioned in the first paragraph, the King shall also state the general instructions followed during the past year, and those proposed for the coming year, on which decisions under the third paragraph will be based.

The King may issue rules for the distribution of dividends in companies with limited liability other than joint-stock companies.

The remuneration to members of the board of limited liability companies may not exceed an amount which would be reasonable having regard to the work performed and the responsibility of the task. The King may issue rules regarding such remuneration."

According to the amending Act § 28 now reads:

"Joint-stock companies may not distribute dividends or make other distributions or payments which may be placed on a par with dividends, exceeding what is justified in view of the provisions contained in the Act of 4 June 1976 on Joint-Stock Companies, § 12-5.

Repayment of share capital written down previously without repayment may not take place without the approval of the Price Directorate.

The remuneration of the officers of a joint-stock company may not exceed an amount which would be reasonable having regard to the work performed and theresponsibility of the task."

As will be seen, the previous control of dividends is now abolished. § 28 now only refers to provisions contained in the Act of 4 June 1976 on Joint-Stock Companies on distribution of dividends.

The latest amendment to § 28 was made 4 June 1976.

§§ 29-31 of the Act of 26 June 1953 contained detailed provisions concerning the control of dividends established by the previous § 28. As a consequence of the amending Act of 17 June 1960 the contents of these Sections are also revised. The new § 29 states that the Storting is empowered for each individual year to make a specific resolution on regulation of dividends. In accordance with § 30, the King may impose the duty to submit reports on the distribution of dividends on companies. Until now there has been no question of exercising the power conferred upon the authorities by these provisions. The aim of the new § 31 is to prevent the distribution of additional dividends for years when the dividends have been restricted on account of the previous regulation system.

b. The Administrative System.

General provisions concerning the functions of the various authorities are contained in Section 2, 3 and 4 of the Act.

As will be seen, the most important decisions are to be made by the King. However, under §§ 25 and 45 of the Act, decisions shall in certain cases be made by the Storting. The Storting has made no decisions under these Sections so far. The King is also to issue general instructions governing the control and regulatory activities under the Act (cf. § 3).

Within the framework of the decisions made by the Storting or the King, the Ministry of Consumer Affairs and Government Administration is responsible for the control and regulatory activities under the Act and for making decisions in matters of major importance.

Cases considered in accordance with §§ 23, 37, 40 and 41 of the Act are to be decided by the Price Council. The same applies to appeals against decisions on the obligation to notify (cf. § 33 of the Act, last paragraph, and § 34, last paragraph). The Price Council is composed of 7 members, appointed by the King. The Head of the Price Directorate or his representative must attend the meetings of the Council and submit a statement on the matter after the interested parties have been heard.

The Price Directorate is central administrative authority for control and regulatory activities under the Act. The majority of cases are decided by the Directorate. In addition the Directorate assists the Storting, the King or the Ministry concerned by preparing the matters to be decided by these authorities and by implementing their decisions. The Directorate also prepares matters to be considered by the Price Council and carries out the decisions of the Council. Further, authority to instruct the local bodies and other auxiliary bodies with regard to the exercise of their regulatory powers has been vested in the Price Directorate.

Local bodies are Regional Offices of the Price Inspectorate, which cover one or more counties and the Select Price Committees, appointed by local councils.

The functions of the Regional Offices and the Select Price Committees are partly of a regulatory, partly of a supervisory nature.

With regard to their controlling activities the Regional Offices and the select Price Committees were previously placed under the inspectorate of Prices and Rationing. By an Act of 28 March 1958 this institution was reorganized and renamed the Price Inspectorate.

If the Price Inspectorate or the subordinate bodies find that an infringement of the current Act or of regulatory provisions issued under the Act has occurred and find that action should be taken, a report is submitted to the prosecuting authority concerned. The prosecuting authority decides whether proceedings shall be instituted in accordance with ordinary penal procedure.

By the amending Act of 22 December 1961 the Price Inspectorate was placed under the supervision of the Price Directorate.

In accordance with § 8 of the Price Act, auxiliary bodies may be established to assist the regular authorities within specific fields. Previously such auxiliary bodies were widely used. Now only three consultant Select Price Committees are left. In addition assistance is given by certain public authorities.

It should be noted that the Act to a very large extent authorizes the delegation of the power to make decisions (cf. § 9). As an example § 24 of the Act may be mentioned which confers upon the King the power to issue such regulatory provisions as mentioned in the Section. However, by delegation of authority most of these provisions are issued by the Ministry concerned and by the Price Directorate. Only the most far-reaching general decisions are actually made by the King. The same applies with regard to the decisions made under § 42.

With the entry into force of the new Public Administration Act on 1 January 1970, the rules of procedure in the Price Act have been modified by an Act of 19 June 1969. These modifications are also made effective as from 1 January 1970. The Price Act was the subject of sharp controversy when it was enacted in 1953, mainly due to the comprehensive powers granted the authorities to regulate prices and competition. Very detailed procedural rules

were therefore adopted, and the Price Act thus served as an example for subsequent legislation. Since the new Public Administration act is of general application, also covering cases handled under the Price Act, the rules of procedure in the Price Act have been modified accordingly. However, this has not resulted in any major changes to the administrative procedure already applicable. For example procedural rules on prior notification and on the stating of grounds for decisions, which were previously given in §§ 10 and 11, are now mainly covered by §§ 17, 37, 24 and 25 in the Public Administration Act respectively, whilst the amended §§ 10 and 11 in the Price Act merely contain such special rules considered necessary for the regulation of prices and competition.

The provisions contained in § 14 are of major importance. The purpose of this Section is to ensure that the extensive powers conferred by the Act upon the authorities are exercised appropriately and in accordance with the view prevailing in the Storting. To achieve this aim, the King is every year to submit to the Storting a report on the instructions on which it is intended to base the regulatory and controlling activities. The instructions do not have to be revised each year. The King may report to the Storting that the previous instructions shall continue to be in force. The King is also to submit special reports on rules concerning levies or the setting aside of funds under § 25, third or sixth paragraph, and on particularly important rules of a general nature under § 24 or § 42, fourth paragraph. The reports are considered by the Storting, which may decide on amendments.

c. Judicial Control.

The courts may scrutinize the decisions of the administrative authorities in accordance with the general rules in Norwegian law concerning the scrutiny of administrative decisions. The principal rule is that the courts may try the legal aspects of the case, but not the assumption with regard to whether the intervention is required or expedient. The courts may, however, overrule decisions which are found to be based on ulterior considerations or otherwise are the result of abuse of power.

d. General Provisions contained in the Act.

§ 18 contains a general prohibition of unreasonable prices and unreasonable terms of business. However, the courts will hardly pronounce judgement against a defendant without having found that

the price or the term of business is clearly unreasonable. The prohibition is of consequence only when no rules as to prices have been issued under § 24.

The stipulations and prohibitions contained in §§ 19-21 are of little significance. To the extent that it is found necessary, the authorities may issue more detailed rules under " 24.

§ 23 does not contain any prohibition but authorizes the Price Council to intervene against refusal of business dealings where the refusal is found unreasonable or detrimental to the public interest. These provisions are of the same nature as those contained in §§ 39-42. They are included in Section 4, owing to the fact that in the Bill the corresponding provisions were framed as a prohibition.

e. Refusal to deal.

§ 23 of the Price Act consolidates § 21 of the previous Trust Act. § 23 authorized the Price Council to prohibit an enterprise to refuse business dealings with another enterprise or with a consumer if the Council finds the refusal to deal detrimental to the public interest or unreasonable to the other party. When judging as to whether or not the refusal to deal may have a negative effect, the Council must take both the boycotted party and the public interest into consideration.

As opposed to § 21 of the Trust Act, § 23 does not require that the boycott which contains unreasonable conditions represents a deliberate restrictive business arrangement. Thus, § 23 is broader in this sense than the previous rule in § 21 of the Trust Act.

§ 23 gives power to intervene in cases where refusal to deal influences the competitive relations and where the economic interests of the parties are dominant.

According to the wording of § 23, the Price Council is not obliged to use its power when considered unsuitable. Complaints of minor importance as to principle and economic consequences may be rejected by the Council.

The Price Council can only make decisions which apply for the future.

The Council does not have the power to attach other legal consequences such as penalty, compensation etc. because of a refusal to deal which has taken place. Legal consequences of § 23 enter

into effect when a prohibition laid down by the Council is neglected by the person against whom the prohibition is directed, cf. §§ 52 and 53.

The Courts cannot cast aside a decision made by the Price Council as to whether or not a condition is "unusual or unreasonable". The Courts however, may judge the legal basis of the decision.

The Price Council is organized as a tribunal of seven members appointed by the King. The Price Act has no provisions concerning the selections of members; however, it is customary to follow guidelines issued by the Department of Consumer Affairs and Government Administration.

These guidelines recommend that Supreme Court Judges should hold the position of chairman and vice-chairman. The other members should have particularly good knowledge in the fields of economics, trade, production and consumer affairs. It is emphasized that the members of the Price Council should not represent any particular fraction or group, as it is desirable that they approach each case which comes before the Council as independently and neutrally as possible.

The Councils chairman and vice-chairman have always been supreme Court Judges, and one member has always been a professor of economics. The remaining five members have different qualifications and professions, and area suggested for appointment by several large unions and organizations.

The realization of the objectives of the Price Act, cf. for example § 1 is among the tasks of the Price Council. Similar to the other bodies established according to the Price Act, the work of the Price Council is based on general instructions contained in the Price Act itself or general instructions given by the Storting within the framework of the Price Act.

Although the Price Council is bound by the above mentioned instructions, it has the right and duty to evaluate the cases on a free and independent basis.

Whether the Price Act may be applied on refusal to deal by foreign enterprises depends on whether or not the refusal has an effect on the Norwegian market.

The Price Council may for example intervene when a foreign supplier refuses to deal with a Norwegian dealer because of the latter selling at a price lower than the recommended resale price.

The Price Council may similarly take exclusive dealing arrangements on market sharing between a foreign supplier and a Norwegian dealer into consideration.

The Price Council functions similar to a Court in cases concerning refusal to do business dealings. In this connection the Council considers conditions of contract, exclusive dealings, restrictive business practices-clauses etc.

As a main rule, the Price Council prohibits refusal to deal caused by the wish to enforce resale prices practiced in an unlawful manner, collective refusals to deal and refusals by monopolies or enterprises in a dominant position. The Price Council usually reacts against refusals aimed at protecting already existing commercial activities against competition from companies just being established. The Council reacts strongly against refusals caused by pressure from competitors, personal antagonisms etc.

On the other hand, certain refusals to deal are generally accepted. The Council may accept specific terms of minimum-quotas of goods made by a supplier. Conditions concerning the retailers professional qualifications are also accepted if the products in question are of a highly advanced technical nature. Finally, refusals to deal are often accepted for the sake of rationalization.

f. Power to Control and Regulate Prices, Rates of Profits and Other Terms of Business.

§ 24 confers upon the administration extensive powers to regulate. Under sub-paragraph 1 a) of this Section there may, in addition to direct regulation of prices, rates of profit and terms of business, also be issued prohibition of private restrictive regulation of prices, rates of profit and terms of business. Sub-paragraph 1 b) of § 24 empowers the authorities to issue provisions for the purpose of contending against unnecessary middlemen's activities and unfair competition. Under sub-paragraph 1 c) such supplementary provisions may be issued as are needed to facilitate control over the observance of rules issued under sub-paragraph 1 a) and b). Sub-section 2 supplements the provisions contained in sub-paragraph 1 a). Under sub- paragraph 3, provisions may be issued on price marking and the shape of goods packaging, etc, to make it easier for the consumers to appraise prices and qualities.

g. Long-term Restrictive Agreements.

§ 37 of the Price Act of 1953 states that agreements to participate in a restrictive business arrangement which is subject to the obligation to notify may not, without the prior approval of the Price Council, be concluded for a longer period than one year or with a longer term of notice than three months. Corresponding provisions were contained in the Trust Act.

The Control Council, which made the decisions under the Trust Act, considered a number of such cases. Approval of long-term restrictive arrangements was only granted if the Council found that the arrangements must be considered justifiable and consistent with the public interest. In some cases, conditions for approval were laid down.

Under the current Act the Price Council generally has granted approval for long-term agreements where the agreements are assumed to promote rationalization, lessen costs or otherwise to further more effective production and where the longer term of notice or the longer period viewed in this connection are found reasonable or justifiable.

It should be added that approval granted under § 37 of the Act does not prevent future intervention against a restrictive business arrangement. Consequently, the general prohibitions of resale price maintenance, horizontal price agreements and agreements in respect of tenders are applied also to restrictive business arrangements being approved under § 37, provided that exemption is not granted. There may also be particular intervention if it is found that such action is called for.

2. PROVISIONS CONCERNING RESALE PRICE MAINTENANCE

(Royal Decree of 19 October 1957).

The practice by which suppliers determine the prices or rates of profit to be charged by dealers was applied to a growing extent in Norway after World War I. Under the Trust Act intervention was possible only in special cases. Under the emergency price legislation in force during and after World War II, general provisions were issued prohibiting minimum prices. Other provisions were issued for preventing that enterprises should be induced to charge higher prices than they themselves found reason to do.

However, these provisions were abolished at the end of 1953.

After a comprehensive investigation on the extent of resale price regulation in Norway and after discussions with interested organizations and institutions on the question of intervention, a report was submitted to the Storting by Royal Decree of 25 January 1957 on directives for general provisions regarding resale price maintenance. The directives were unanimously approved by the Storting. On this basis general provisions regarding resale price maintenance were issued by Royal Decree of 18 October 1957.

As will be seen, a distinction is made between collective and individual price maintenance. Collective resale price maintenance must not be carried out without prior approval of the Price Directorate. This applies regardless of whether the price maintenance is of a binding or a guiding nature.

Nor may any individual supplier practice binding regulation on the prices charged or the profits taken by the retailer. But the individual supplier may guide the retailer with regard to prices provided that it is clearly stated that the retailer may charge lower prices. Nor may the retailers in any way be induced to charge prices recommended by the supplier. Reference is made to §§ 2 and 5.

Under § 9 of the Decree, the Price Directorate may grant exemptions from §§ 1-7 when such actions are called for by special circumstances and are considered consistent with the public interest.

Few exemptions have been granted, the most important being the exemption granted for books.

3. PROVISIONS CONCERNING HORIZONTAL PRICE COOPERATION

(Royal Decree of 1 July 1960).

After the provisions on resale price maintenance had been issued, preparatory work was done with regard to general provisons on horizontal price agreements and agreements in respect of tenders. A report was submitted to the Storting by Royal Decree of 18 September 1959 on directives for general provisions regarding regulation of prices and rates of profit. The report was approved by the Storting by a large majority at the sitting on 3 June 1960, only 11 members voting against. The provisions were issued by Royal Decree of 1 July 1960.

§ 1 of the provisions contains a general prohibition of restrictive arrangements with regard to prices, rates of profit, "gift offers" and rebates. The prohibition applies to all such kinds of regulations except arrangements covered by the provisions on resale price maintenance (cf. § 8). In audition to strictly horizontal agreements concluded between enterprises engaged in the same stages of production or distribution, the prohibition also applies to regulations which concern enterprises engaged in different stages, unless the agreement is covered by the provisions on resale price maintenance.

§ 2 contains a specific prohibition of agreements in respect of tenders. Price agreements concerning tenders are also covered by the provisions contained in § 1. The specific prohibition of regulation in respect of tenders is issued because such regulations may be established not only by price agreements, but for example by agreements stating that certain enterprises shall not submit tenders or that tenders shall be allocated between certain enterprises.

§ 3 contains a general prohibition of inducing enterprises to charge higher prices or stipulate higher rates of profit or to grant "gift offers" or rebates other than such as they themselves find reason to apply.

Certain economic sectors are exempted from the prohibition (cf. § 5). Under § 6 the authorities may grant exemption from the provisions contained in §§ 1-4.

The great majority of applications for exemption were decided during 1961. Out of a total of some 600 associations and groups covered by the prohibition approximately one third were granted

exemptions. The remaining ones had to abolish restrictive business practices covered by the prohibition.

As a rule, exemptions are granted either for a fixed period or provisionally. They may be withdrawn at any time if they are no longer considered necessary or if they lead to excessively high prices, rates, profit or otherwise are considered unreasonable or contrary to the public interest (cf. § 6).

Most of the exemptions cover agreements between industrial enterprises, enterprises engaged in trade and crafts or transport. The other exemptions cover associations of doctors, lawyers, architects, engineers, authors, publishers and other liberal professions. In these fields the factors to be taken into consideration are dissimilar to those prevailing where production, trade and related activities are considered.

The exemptions are under current consideration and evaluation.

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